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From: Mirza, Sabah <Mirza.Sabah@epa.gov>

Sent: Wednesday, August 21, 2019 10:52 AM

To: OECA Office Directors and Deputy Directors <OECA_Office_Directors_and_Deputy_Directors@epa.gov>

Cc: Johnson, Kathleen <Johnson.Kathleen@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Segall, Martha <Segall.Martha@epa.gov>; VanTil, Barbara <vantil.barbara@epa.gov>; King, Carol <King.Carol@epa.gov>; Vizard, Elizabeth <Vizard.Elizabeth@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>

Subject: URGENT: OECA AA Region 7 Visit - Respond to Q&A by COB today

Hi all,

I sincerely apologize for this short notice - we just received some anticipated questions from Region 7 for the Q&A session at the all-hands meeting. We've tagged individuals who we think can help answer these questions for Susan and Larry. **Please reply to me and Cari by COB today.**

1. We could use a little clarity on SEPS and mitigation. Our understanding is that the EPA SEP Policy is unchanged, and that there is no change on use of SEPs in administrative cases. Is that true? On civil judicial cases, can you explain what DOJ's position is on SEPs? And on mitigation? Finally, is any of this written down anywhere?
 - Caroline Makepeace and John Fogarty

Ex. 5 Deliberative Process (DP)

3. With Newark, lead is back in the national news again. Can you talk about what you see as the role of the enforcement program in attacking childhood blood lead poisoning?
 - Carol King, Liz Vizard, Stephanie Brown
4. We are hearing some concerns from our states about the Drinking Water NCI. We will continue to engage our states at a regional level but can you talk about how OECA plans to collaborate with states on NCI implementation?
 - Mark Pollins, Carol King, Barbara VanTil, Martha Segall
5. The realignment has been a major change in Region 7. What is your perspective on how the realignment is going? What do you see as the biggest benefits of this change moving forward?
 - Kathleen, Rosemarie, David H.

Thanks,
Sabah

~~~~~  
Sabah Mirza, Special Assistant  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW, 3207E WJC South  
Washington, DC 20460

Office: 202-564-8176

Message

---

**From:** Dworkin, Karen (ENRD) [Karen.Dworkin@usdoj.gov]  
**Sent:** 8/20/2019 6:43:20 PM  
**To:** Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]  
**Subject:** RE: called you re SEPs

Jeff's state and local government SEP memo.

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

---

**From:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
**Sent:** Tuesday, August 20, 2019 2:37 PM  
**To:** Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV>  
**Subject:** RE: called you re SEPs

Sorry that I have not been able to touch base with you. I have been in meetings.

I don't know about a SEP memo, but I did get an email from Susan communicating Claire's views (it was just a few bullets). Is there a memo?

Larry has asked me to schedule time with you/Tom and Bruce to discuss next steps.

Rosemarie

---

**From:** Dworkin, Karen (ENRD) <Karen.Dworkin@usdoj.gov>  
**Sent:** Tuesday, August 20, 2019 2:33 PM  
**To:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
**Subject:** called you re SEPs

I assume you heard about the SEP memo?

Message

---

**From:** Koslow, Karin [Koslow.Karin@epa.gov]  
**Sent:** 8/9/2019 2:37:24 PM  
**To:** OECA-OCE-MANAGERS [OECAOCEMANAGERS@epa.gov]  
**CC:** Buterbaugh, Kristin [Buterbaugh.Kristin@epa.gov]  
**Subject:** FW: DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy

FYI below.

Thanks,  
Karin

Karin Koslow  
Deputy Director, Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
Desk: (202) 564-0171  
Cell: (202) 716-5645  
WJC South Room 3142D

---

**From:** Starfield, Lawrence <Starfield.Lawrence@epa.gov>  
**Sent:** Friday, August 09, 2019 10:16 AM  
**To:** Regional Counsels and Deputies <Regional\_Counsels\_and\_Deputies@epa.gov>; ECAD Directors and Deputies <ECAD\_Directors\_and\_Deputies@epa.gov>  
**Cc:** Koslow, Karin <Koslow.Karin@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>  
**Subject:** FW: DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy

RC and ECAD colleagues:

I wanted to make you aware of this story on SEPs from InsideEPA, as you may get similar inquiries from outside parties or the press. FYI, our response to InsideEPA was the following:

EPA has not changed its 2015 policy regarding supplemental environmental projects (SEPs) in settlement agreements. A SEP is a beneficial environmental project or activity to which a party agrees that goes beyond what could legally be required in order for the party to return to compliance. On November 7, 2018, former Attorney General Jeff Sessions issued a Department of Justice (DOJ) policy entitled *Principles and Procedures for Civil Consent Decrees and Settlement Agreements with State and Local Governmental Entities* – see <https://www.justice.gov/opa/pr/justice-department-releases-memorandum-litigation-guidelines-civil-consent-decrees-and>. As a policy matter, DOJ requires that judicial settlements with a state or local entity that include SEPs must first be reviewed and approved by the Associate Attorney General.

Larry

## **DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy**

August 08, 2019

AUSTIN, TX -- The Department of Justice (DOJ) is rejecting supplemental environmental projects (SEPs) in settlements it is negotiating with local governmental agencies, a move that appears to undercut department policy that says it will approve the projects as part of deals provided they comply with EPA's SEP policy, attorneys say.

The rejections have begun being communicated over the past month, according to one industry attorney familiar with negotiations in several clean water settlements between DOJ and local governments, coming after years of negotiations where DOJ officials indicated the projects were likely to be approved.

A second source, industry attorney Nathan Vassar, told an Aug. 1 session of the Texas Environmental Superconference here that if attorneys have a SEP to propose as part of a federal settlement, "it will take some real convincing because apparently the ongoing discussions -- and this is more at DOJ than it is at EPA -- are that, 'We're not going to allow SEPs as part of the enforcement protocol.'"

Vassar said this marks a change from past practice, when Trump officials told attorneys representing municipalities that their broader efforts to limit the use of SEPs would not generally apply in settlements involving local government entities. "We were told on several occasions, 'On municipal enforcement, if you like your SEP, you can keep your SEP'," he said.

However, that is no longer the case, Vassar said. "We learned just this week, it may be news to some . . . A SEP as a part of an enforcement mechanism is not going to be pursued as a part of this administration."

A DOJ spokesman denies there has been a policy change, saying all department guidance is being followed and declining to comment on whether new guidance has been issued.

DOJ's "Environment and Natural Resources Division [(ENRD)] is following all current [DOJ] memoranda, including those issued by the Division itself and by the Attorney General," the spokesman says.

The spokesman declined to clarify whether that means SEPs can be approved or if there is a new document prohibiting them.

An EPA spokesman says the agency has not changed its 2015 policy regarding use of SEPs in settlement agreements. But the spokesman noted that former Attorney General Jeff Sessions, in a 2018 policy, had required that "judicial settlements with a state or local entity that include SEPs must first be reviewed and approved by the Associate Attorney General."

The new prohibition on SEPs renews focus on the issue, which has raised concerns in the past. The concern stemmed initially from Sessions' [June 2017 memo](#) banning settlements that included payments to third parties. Sessions opposed such payments because the parties were "neither victims nor parties to the lawsuits."

Some GOP lawmakers also complained that such settlements amount to “sweetheart deals” for environmental groups that benefitted from SEPs.

But many attorneys warned at the time that the prohibition would drastically impair their ability to settle EPA-related cases, and they strongly defended SEPs as providing a major incentive for environmental settlements with local both governments and private industry.

For example, some municipal officials were concerned that any limitation on the use of SEPs would hamper their efforts to expand the use of SEPs to offset stipulated penalties.

## **EPA Policy**

After the uproar, DOJ's then-acting ENRD chief Jeff Woods in a January 2018 memo clarified exceptions to the payment ban, including for projects that comply with EPA's 2015 SEP policy.

Then, Sessions in a November 2018 policy wrote that settlements with municipal entities that included SEPs had to win approval from the associate attorney general for ENRD.

While the policy barring payments to third parties has been implemented, it faces some legal uncertainty as a federal court in Washington, D.C., has so far declined a DOJ request to drop a SEP from an already approved settlement with Harley Davidson -- more than two years after the request was first made.

Now, industry sources say DOJ is now rejecting approvals of municipal SEPs, raising questions about how to proceed.

“What we are starting to see happen is where we proposed SEPs we thought would be OK, and that everyone indicated were OK, but of course did not have final approval, are now getting rejected,” the first industry source says.

DOJ is communicating to these attorneys that the settlements will not be approved if they contain the SEPs, but the source says it is unclear who made the change and why. No one at DOJ “has cited new documents to us,” the source says.

It is also unclear whether any of the settling parties will seek to challenge the rejection of the SEPs. “We have to debate, ‘Ok do you challenge it and go to higher levels to try to convince [DOJ] why you should be able to do this, or do you just say, ‘OK, we’re going to put more money in the penalty?’”

These discussions are “just happening now . . . we are engaged in thinking about that right now.” The answer will be based on how badly the settling party wants to do the SEP “or whether it can get the case done, pay more money and move on,” the source adds. “We have to think about each case and whether it is worth having that fight.”

This source has “not had any direct discussions with someone at DOJ or EPA other than being told they are not accepting that SEP.”

The attorney notes that including SEPs in local government settlements has “been very valuable” and “helped us get to agreements in situations where municipalities feel very strongly that if they pay money it should go toward the community, and hopefully go to improving water quality for the community, and not get sent to D.C. to go to some federal agency.”

City councils are more apt to approve settlements if they include incentives such as SEPs that require tree planting or repairing a sewer line, the source explains. However, it is also unclear, the source notes, whether dropping a SEP at this stage will tank the overarching settlement and result in litigation.

The industry source says when the policies first came out, it appeared they would not restrict SEPs by municipalities unless the governments were paying contractors to do the work, rather than having their own employees do so.

Now, the source says, even if a city employee were to plant trees on private property as part of a SEP, that appears to be prohibited as well, because DOJ "would say you are providing value to that property owner, and that is something you cannot do."

The source adds that if all SEPs are effectively banned, that would "be really unfortunate" because "they helped make it easier to reach agreements and provided real environmental benefits to communities."

The source says it is difficult to identify the universe of threatened SEPs because the Trump DOJ has not initiated many cases, so a lot of the cases being negotiated were started under the Obama administration, continued into Trump "and now we're being told we can't do it."

The source says the policy is less problematic if "it is only the policy for the next year and a half." But if it "lasts into another administration," then it would "affect a lot of cases" and have a "substantial" impact on settlements.

The last case this source was involved with that had a SEP -- which required a city to improve a stream -- was approved by a court in early 2018. -- *Dawn Reeves* ([dreeves@iwpnews.com](mailto:dreeves@iwpnews.com)) & *Lee Logan* ([llogan@iwpnews.com](mailto:llogan@iwpnews.com))

Related News | [Litigation](#) | [Transition 2016-2017](#) |

220946

Message

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**From:** Porter, Amy [Porter.Amy@epa.gov]  
**Sent:** 7/17/2019 9:20:27 PM  
**To:** Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Koslow, Karin [Koslow.Karin@epa.gov]; Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]; Buterbaugh, Kristin [Buterbaugh.Kristin@epa.gov]; Makepeace, Caroline [Makepeace.Caroline@epa.gov]  
**Subject:** FW: Draft email to Claire Murray re SEPs

Resending the last email that was worked on but never sent – re whether it might be useful for the next communication. (I'll be re-reading it concurrently but wanted to get it to you all asap.)

---

**From:** Porter, Amy  
**Sent:** Wednesday, June 05, 2019 3:00 PM  
**To:** Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>  
**Cc:** Rosemarie Kelley (Kelley.Rosemarie@epa.gov) <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Johnpc Fogarty <Fogarty.Johnpc@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>  
**Subject:** Draft email to Claire Murray re SEPs

Susan – Please see draft email below for you to send to Claire Murray as discussed. Please let us know if you have any questions.

Thanks,  
Amy

Claire—

**Ex. 5 AC/DP**



# Ex. 5 AC/DP

Please let me know if I can provide any further information.

Susan

Message

---

**From:** Porter, Amy [Porter.Amy@epa.gov]  
**Sent:** 8/8/2019 4:56:40 PM  
**To:** Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]; Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]  
**Subject:** FW: Additional edits from Larry - FW: InsideEPA Response

FYI

---

**From:** Koslow, Karin <Koslow.Karin@epa.gov>  
**Sent:** Thursday, August 08, 2019 12:41 PM  
**To:** Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>  
**Subject:** Additional edits from Larry - FW: InsideEPA Response

Karin Koslow  
Deputy Director, Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
Desk: (202) 564-0171  
Cell: Ex. 6  
WJC South Room 3142D

---

**From:** Bodine, Susan <bodine.susan@epa.gov>  
**Sent:** Thursday, August 08, 2019 12:26 PM  
**To:** Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Egan, Patrick <egan.patrick@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>  
**Cc:** Hull, George <Hull.George@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>  
**Subject:** RE: InsideEPA Response

OK

---

**From:** Starfield, Lawrence <Starfield.Lawrence@epa.gov>  
**Sent:** Thursday, August 8, 2019 12:22 PM  
**To:** Bodine, Susan <bodine.susan@epa.gov>; Egan, Patrick <egan.patrick@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>  
**Cc:** Hull, George <Hull.George@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>  
**Subject:** RE: InsideEPA Response

Susan,

# Ex. 5 AC/DP

Cc'ing Karin to see if OCE has any concerns with the wording.

Larry

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---

**From:** Bodine, Susan <[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>

**Sent:** Thursday, August 08, 2019 11:56 AM

**To:** Egan, Patrick <[egan.patrick@epa.gov](mailto:egan.patrick@epa.gov)>; Starfield, Lawrence <[Starfield.Lawrence@epa.gov](mailto:Starfield.Lawrence@epa.gov)>; Traylor, Patrick <[traylor.patrick@epa.gov](mailto:traylor.patrick@epa.gov)>

**Cc:** Hull, George <[Hull.George@epa.gov](mailto:Hull.George@epa.gov)>

**Subject:** RE: InsideEPA Response

My redraft. Any comments? Also needs coordination with DOJ.

# Ex. 5 Deliberative Process (DP)

---

**From:** Egan, Patrick <[egan.patrick@epa.gov](mailto:egan.patrick@epa.gov)>

**Sent:** Thursday, August 8, 2019 11:01 AM

**To:** Bodine, Susan <[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>; Starfield, Lawrence <[Starfield.Lawrence@epa.gov](mailto:Starfield.Lawrence@epa.gov)>; Traylor, Patrick <[traylor.patrick@epa.gov](mailto:traylor.patrick@epa.gov)>

Cc: Hull, George <[Hull.George@epa.gov](mailto:Hull.George@epa.gov)>

Subject: InsideEPA Response

Susan, Larry and Patrick,

Here is a proposed response to InsideEPA's inquiry. Let me know if you have any comments.

Thanks,

Pat

## Ex. 5 Deliberative Process (DP)

Patrick J. Egan, M.P.A.  
Deputy Director of Communications  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW (MC: 2201A)  
Washington, DC 20460  
Office: 202-564-4059 | Cell: **Ex. 6**

Message

---

**From:** Egan, Patrick [egan.patrick@epa.gov]  
**Sent:** 8/8/2019 1:16:11 PM  
**To:** Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Koslow, Karin [Koslow.Karin@epa.gov]  
**CC:** Hull, George [Hull.George@epa.gov]  
**Subject:** FW: enforcement-related question

Did not CC you on this earlier message. We received an inquiry from InsideEPA concerning SEPs.

Patrick J. Egan, M.P.A.  
Deputy Director of Communications  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW (MC: 2201A)  
Washington, DC 20460  
Office: 202-564-4059 | Cell: Ex. 6

---

**From:** Egan, Patrick  
**Sent:** Thursday, August 8, 2019 8:13 AM  
**To:** Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>  
**Cc:** Hull, George <Hull.George@epa.gov>  
**Subject:** FW: enforcement-related question

Susan, Larry and Patrick,

We received an inquiry below from InsideEPA asking whether there is a new SEP policy. Please let us know how you would like to respond.

Patrick J. Egan, M.P.A.  
Deputy Director of Communications  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW (MC: 2201A)  
Washington, DC 20460  
Office: 202-564-4059 | Cell: Ex. 6

---

**From:** Hackel, Angela <Hackel.Angela@epa.gov>  
**Sent:** Wednesday, August 7, 2019 6:19 PM  
**To:** Hull, George <Hull.George@epa.gov>; Egan, Patrick <egan.patrick@epa.gov>  
**Cc:** Labbe, Ken <Labbe.Ken@epa.gov>  
**Subject:** FW: enforcement-related question

Hi George and Patrick,

Can you please let me know how you would like to respond to the below?

Thanks!

Angela

Angela Hackel  
Senior Advisor  
Office of Public Affairs  
Office of the Administrator  
U.S. Environmental Protection Agency  
Washington, DC 20460  
Office: 202.566.2977  
Cell: Ex. 6

Begin forwarded message:

**Resent-From:** <Press@epa.gov>  
**From:** Dawn Reeves <dreeves@iwpnews.com>  
**Date:** August 7, 2019 at 5:35:19 PM EDT  
**To:** Press <Press@epa.gov>  
**Subject:** enforcement-related question

Hi,  
It's Dawn Reeves at Inside EPA wondering if there is a new enforcement policy against SEPs b/c I am being told by industry attorneys negotiating settlements that they are now being told the SEPs in their settlements are no longer going to be approved by DOJ even if they comply with EPA's SEP policy, as DOJ requires.  
DOJ says they are complying with all memoranda and declined to say if there is a document dated after January 2018 that articulated the SEP exception here  
<https://www.justice.gov/enrd/page/file/1043726/download>

My deadline is noon tomorrow if you can provide me any info or put me on the phone with someone in OECA, that would be great.

Thanks!

Dawn

Message

---

**From:** Denton, Loren [Denton.Loren@epa.gov]  
**Sent:** 6/14/2019 1:27:38 AM  
**To:** Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]  
**Subject:** Re: Corpus Sep

I agree. Thanks.

Sent from my iPhone

On Jun 13, 2019, at 8:27 PM, Kelley, Rosemarie <Kelley.Rosemarie@epa.gov> wrote:

Frankly, I am not sure the outcome will be any different.

Rosemarie

On Jun 13, 2019, at 6:40 PM, Denton, Loren <Denton.Loren@epa.gov> wrote:

Rosemarie,

**Ex. 5 AC/AWP/DP**

Sorry for the confusion I likely created on this one.

Loren

Loren Denton, Chief  
Municipal Branch  
Water Enforcement Division  
Office of Enforcement and Compliance Assurance  
U.S. EPA (2243A)  
Washington, D.C. 20460  
Phone: (202) 564-1148

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**From:** Makepeace, Caroline  
**Sent:** Thursday, June 13, 2019 5:47 PM  
**To:** Denton, Loren <Denton.Loren@epa.gov>  
**Cc:** Rae, Sarah <Rae.Sarah@epa.gov>; Zimny, James <zimny.james@epa.gov>  
**Subject:** RE: Corpus Sep

## Ex. 5 AC/AWP/DP

Caroline Makepeace  
Senior Counsel  
Office of Civil Enforcement  
US Environmental Protection Agency  
202-564-6012

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---

**From:** Denton, Loren  
**Sent:** Thursday, June 13, 2019 5:40 PM  
**To:** Makepeace, Caroline <Makepeace.Caroline@epa.gov>  
**Cc:** Rae, Sarah <Rae.Sarah@epa.gov>; Zimny, James <zimny.james@epa.gov>  
**Subject:** RE: Corpus Sep

## Ex. 5 AC/AWP/DP

Loren Denton, Chief  
Municipal Branch  
Water Enforcement Division  
Office of Enforcement and Compliance Assurance  
U.S. EPA (2243A)  
Washington, D.C. 20460  
Phone: (202) 564-1148

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---

**From:** Makepeace, Caroline  
**Sent:** Thursday, June 13, 2019 5:29 PM  
**To:** Denton, Loren <Denton.Loren@epa.gov>  
**Cc:** Rae, Sarah <Rae.Sarah@epa.gov>; Zimny, James <zimny.james@epa.gov>  
**Subject:** RE: Corpus Sep

### Ex. 5 AC/AWP/DP

Caroline Makepeace  
Senior Counsel  
Office of Civil Enforcement  
US Environmental Protection Agency  
202-564-6012



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---

**From:** Denton, Loren  
**Sent:** Thursday, June 13, 2019 5:28 PM  
**To:** Makepeace, Caroline <[Makepeace.Caroline@epa.gov](mailto:Makepeace.Caroline@epa.gov)>  
**Cc:** Rae, Sarah <[Rae.Sarah@epa.gov](mailto:Rae.Sarah@epa.gov)>; Zimny, James <[zimny.james@epa.gov](mailto:zimny.james@epa.gov)>  
**Subject:** RE: Corpus Sep

## Ex. 5 AC/AWP/DP

Loren Denton, Chief  
Municipal Branch  
Water Enforcement Division  
Office of Enforcement and Compliance Assurance  
U.S. EPA (2243A)  
Washington, D.C. 20460  
Phone: (202) 564-1148

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---

**From:** Makepeace, Caroline  
**Sent:** Thursday, June 13, 2019 5:25 PM  
**To:** Denton, Loren <[Denton.Loren@epa.gov](mailto:Denton.Loren@epa.gov)>  
**Cc:** Rae, Sarah <[Rae.Sarah@epa.gov](mailto:Rae.Sarah@epa.gov)>; Zimny, James <[zimny.james@epa.gov](mailto:zimny.james@epa.gov)>  
**Subject:** RE: Corpus Sep

## Ex. 5 AC/AWP/DP

Caroline Makepeace  
Senior Counsel  
Office of Civil Enforcement  
US Environmental Protection Agency  
202-564-6012

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---

**From:** Denton, Loren  
**Sent:** Thursday, June 13, 2019 5:17 PM  
**To:** Makepeace, Caroline <[Makepeace.Caroline@epa.gov](mailto:Makepeace.Caroline@epa.gov)>  
**Cc:** Rae, Sarah <[Rae.Sarah@epa.gov](mailto:Rae.Sarah@epa.gov)>; Zimny, James <[zimny.james@epa.gov](mailto:zimny.james@epa.gov)>  
**Subject:** Corpus Sep

Caroline:

# Ex. 5 AC/AWP/DP

Loren

Loren Denton, Chief  
Municipal Branch  
Water Enforcement Division  
Office of Enforcement and Compliance Assurance  
U.S. EPA (2243A)  
Washington, D.C. 20460  
Phone: (202) 564-1148

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Message

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**From:** Koslow, Karin [Koslow.Karin@epa.gov]  
**Sent:** 5/21/2019 4:58:03 PM  
**To:** Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]  
**Subject:** My comments for your consideration - FW: FOR REVIEW - Draft email to send to Susan B re Prep for DOJ on SEPs and muni issues  
**Attachments:** Draft Email for Susan Bodine re Prep for DOJ on SEPs and Munis.docx

I think you should review, but thought I'd share my reactions –

## Ex. 5 Deliberative Process (DP)

Thanks,  
Karin

Karin Koslow  
Deputy Director, Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
(202) 564-0171  
WJC South Room 3142D

---

**From:** Makepeace, Caroline  
**Sent:** Tuesday, May 21, 2019 12:46 PM  
**To:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
**Cc:** Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>  
**Subject:** FOR REVIEW - Draft email to send to Susan B re Prep for DOJ on SEPs and muni issues

RK –

## Ex. 5 AC/DP

Let us know if you have edits, concerns, etc.

Caroline Makepeace  
Senior Counsel  
Office of Civil Enforcement

US Environmental Protection Agency  
202-564-6012

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## Appointment

---

**From:** Dworkin, Karen (ENRD) [Karen.Dworkin@usdoj.gov]  
**Sent:** 4/29/2019 3:32:47 PM  
**To:** Starfield, Lawrence [Starfield.Lawrence@epa.gov]; bruce.gelber@usdoj.gov  
**CC:** Douglas, Nathaniel (ENRD) [Nathaniel.Douglas@usdoj.gov]; Snow, Corinne (ENRD) [Corinne.Snow@usdoj.gov]; Mariani, Tom (ENRD) [Tom.Mariani@usdoj.gov]; Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]

**Subject:** SEP discussion on Monday  
**Location:** call-in number

**Start:** 4/29/2019 9:00:00 PM  
**End:** 4/29/2019 10:00:00 PM  
**Show Time As:** Tentative

**Recurrence:** (none)

### Ex. 6 Personal Privacy (PP)

From: Starfield, Lawrence <Starfield.Lawrence@epa.gov>  
Sent: Monday, April 29, 2019 9:21 AM  
To: Gelber, Bruce (ENRD) <BGelber@ENRD.USDOJ.GOV>  
Cc: Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV>; Douglas, Nathaniel (ENRD) <NDouglas@ENRD.USDOJ.GOV>; Snow, Corinne (ENRD) <CSnow@ENRD.USDOJ.GOV>; Mariani, Tom (ENRD) <TMariani@ENRD.USDOJ.GOV>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
Subject: Re: SEP discussion on Monday

That works. Will you send out a calendar invite?

Sent from my iPhone

> On Apr 29, 2019, at 8:35 AM, Gelber, Bruce (ENRD) <Bruce.Gelber@usdoj.gov> wrote:  
>  
> Larry - yes, 5 works best for us if you can arrange it.

### Ex. 5 Attorney Client (AC)

> Sent from my iPhone  
>  
>> On Apr 28, 2019, at 5:17 PM, Starfield, Lawrence <Starfield.Lawrence@epa.gov> wrote:  
>>  
>> Bruce,  
>>  
>> We have a conflict at 5 pm, but might be able to move it. Let me know if I should try.  
>>

### Ex. 5 AC/AWP/DP

>> Larry  
>>  
>> This message is CONFIDENTIAL, and may contain legally privileged information. If you are not the intended recipient, or believe you received this communication in error, please delete it immediately, do not copy, and notify the sender. Thank you.  
>>  
>> -----Original Message-----  
>> From: Gelber, Bruce (ENRD) <Bruce.Gelber@usdoj.gov>  
>> Sent: Sunday, April 28, 2019 3:19 PM  
>> To: karen.dworkin@usdoj.gov; Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>  
>> Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Snow, Corinne (ENRD) <Corinne.Snow@usdoj.gov>; Mariani, Tom (ENRD) <Tom.Mariani@usdoj.gov>  
>> Subject: Re: SEP discussion on Monday  
>>  
>> Karen - how about if we move the call to 5 pm. Would that help?  
>>  
>> Larry - will that work for you?  
>>

## Ex. 5 AC/AWP/DP

>>  
>> Adding Nat to this email  
>>  
>> Sent from my iPhone  
>>  
>>> On Apr 26, 2019, at 7:33 AM, Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV> wrote:  
>>>  
>>> Very sorry but I just realized that I will be **Ex. 6 Personal Privacy (PP)** on  
Monday, at 2:30. Depending on how long that takes, I may or may not be free to join you. Karen.  
>>>  
>>> -----Original Message-----  
>>> From: Gelber, Bruce (ENRD) <BGelber@ENRD.USDOJ.GOV>  
>>> Sent: Thursday, April 25, 2019 4:42 PM  
>>> To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>  
>>> Cc: Snow, Corinne (ENRD) <CSnow@ENRD.USDOJ.GOV>; Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV>;  
Mariani, Tom (ENRD) <TMariani@ENRD.USDOJ.GOV>  
>>> Subject: Re: Do you have time to talk this afternoon  
>>>  
>>> That works for me.  
>>>  
>>> Karen, Corinne, Tom - does that work for you?  
>>>  
>>> Sent from my iPhone  
>>>  
>>>> On Apr 25, 2019, at 4:12 PM, Starfield, Lawrence <Starfield.Lawrence@epa.gov> wrote:  
>>>>  
>>>> Bruce,  
>>>>  
>>>> If the weekly DOJ/EPA calls moves to Tuesday, we would like to use the Monday 3:30 pm slot for a  
pre-brief for the Pannucio meeting.  
>>>>  
>>>> Larry  
>>>>  
>>>> This message is CONFIDENTIAL, and may contain legally privileged information. If you are not the  
intended recipient, or believe you received this communication in error, please delete it immediately, do  
not copy, and notify the sender. Thank you.  
>>>>  
>>>>  
>>>> -----Original Message-----  
>>>> From: Gelber, Bruce (ENRD) <Bruce.Gelber@usdoj.gov>  
>>>> Sent: Thursday, April 25, 2019 12:56 PM  
>>>> To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>  
>>>> Subject: Do you have time to talk this afternoon  
>>>>  
>>>> Anytime after 2  
>>>>  
>>>> Topics include Houston, SEPs and Superfund. What fun!  
>>>>  
>>>> Sent from my iPhone

Message

---

**From:** Porter, Amy [Porter.Amy@epa.gov]  
**Sent:** 4/15/2019 3:36:45 AM  
**To:** Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]  
**CC:** Pollins, Mark [Pollins.Mark@epa.gov]  
**Subject:** Re: Does this summarize Susan's request for SEP briefing prep?

Thank you, Rosemarie. I'll send this Monday morning.

Sent from my iPhone

On Apr 14, 2019, at 2:22 PM, Kelley, Rosemarie <Kelley.Rosemarie@epa.gov> wrote:

Caroline –

**Ex. 5 AC/DP**

*Rosemarie – Is there anything else you would add for guidance for developing materials for Susan?*

No, I think the rest of this note covers it.

Rosemarie

---

**From:** Porter, Amy  
**Sent:** Friday, April 12, 2019 4:48:56 PM  
**To:** Kelley, Rosemarie  
**Cc:** Pollins, Mark  
**Subject:** Does this summarize Susan's request for SEP briefing prep?

Rosemarie – I want to send this to Caroline, and cc John, Mark (acting for you next week and has a "to do" item below) and Susan O'Keefe (who will be acting for me next week) and Apple who will be acting next Friday. Can you please let me know if you think this captures everything?

Thx

Caroline –

**Ex. 5 AC/DP**

*Rosemarie – Is there anything else you would add for guidance for developing materials for Susan?*

Amy Porter, Director  
Crosscutting Policy Staff  
Office of Civil Enforcement  
US Environmental Protection Agency  
202-564-2431



Message

---

**From:** Palmer, Leif [Palmer.Leif@epa.gov]  
**Sent:** 6/26/2019 10:29:27 PM  
**To:** Friedman, Henry (ENRD) [Henry.Friedman@usdoj.gov]; Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Pollins, Mark [Pollins.Mark@epa.gov]; Rubini, Suzanne [Rubini.Suzanne@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]; Bush, William [Bush.William@epa.gov]  
**Subject:** RE: Hattisburg, MS muni CWA settlement

Thanks Henry.

---

**From:** Friedman, Henry (ENRD) <Henry.Friedman@usdoj.gov>  
**Sent:** Wednesday, June 26, 2019 6:15 PM  
**To:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>; Palmer, Leif <Palmer.Leif@epa.gov>; Rubini, Suzanne <Rubini.Suzanne@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Bush, William <Bush.William@epa.gov>  
**Subject:** FW: Hattisburg, MS muni CWA settlement

Dear Rosemarie and Mark, cc: Leif, Suzanne, Mita, Bill

**Ex. 5 AC/AWP/DP**

I hope this is clear. If not, please let me know.

Best,

Henry

---

**From:** Friedman, Henry (ENRD)  
**Sent:** Wednesday, June 26, 2019 3:26 PM  
**To:** Palmer, Leif <Palmer.Leif@epa.gov>; Rubini, Suzanne <Rubini.Suzanne@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Weinischke, Bill (ENRD) <BWeinischk@ENRD.USDOJ.GOV>; Mann, Valerie (ENRD)

<VMann@ENRD.USDOJ.GOV>; Bush, William <Bush.William@epa.gov>

**Subject:** RE: Hattisburg, MS muni CWA settlement

Dear Leif, Suzanne, Mita and Bill B,

# Ex. 5 AC/AWP/DP

Best,

Henry

---

**From:** Friedman, Henry (ENRD)

**Sent:** Wednesday, June 26, 2019 2:43 PM

**To:** Palmer, Leif <Palmer.Leif@epa.gov>; Rubini, Suzanne <Rubini.Suzanne@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Weinischke, Bill (ENRD) <BWeinischk@ENRD.USDOJ.GOV>; Mann, Valerie (ENRD) <VMann@ENRD.USDOJ.GOV>

**Subject:** Hattisburg, MS muni CWA settlement

Dear Leif, Suzanne and Mita,

# Ex. 5 AC/AWP/DP

# **Ex. 5 AC/AWP/DP**

Best,

Henry

Henry S. Friedman

Assistant Section Chief | Environmental Enforcement Section | Environment Division  
U.S. Department of Justice

Mailing Address: P.O. Box 7611 Ben Franklin Station, Washington, D.C. 20044

Phone: 202-514-5268 | Email: [Henry.friedman@usdoj.gov](mailto:Henry.friedman@usdoj.gov)

Message

---

**From:** Theis, Joseph [Theis.Joseph@epa.gov]  
**Sent:** 4/4/2019 5:15:39 PM  
**To:** Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Pollins, Mark [Pollins.Mark@epa.gov]  
**Subject:** RE: Houston

Got it.

Joseph G. Theis  
Associate Director  
Water Enforcement Division  
Office of Enforcement and Compliance Assurance  
U.S. EPA (2243A)  
1200 Pennsylvania Ave, NW  
Washington, D.C. 20460  
(202)564-4053

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---

**From:** Kelley, Rosemarie  
**Sent:** Thursday, April 04, 2019 1:13 PM  
**To:** Pollins, Mark <Pollins.Mark@epa.gov>; Theis, Joseph <Theis.Joseph@epa.gov>  
**Subject:** RE: Houston

Please do not forward Larry's email. Thanks.

Rosemarie

---

**From:** Kelley, Rosemarie  
**Sent:** Thursday, April 04, 2019 1:12 PM  
**To:** Pollins, Mark <Pollins.Mark@epa.gov>; Theis, Joseph <Theis.Joseph@epa.gov>  
**Subject:** FW: Houston

Mark, Joe—

Please see Larry's note to Susan below.

Rosemarie

---

**From:** Starfield, Lawrence  
**Sent:** Wednesday, April 03, 2019 7:01 PM  
**To:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
**Subject:** FW: Houston

FYI.

This message is CONFIDENTIAL, and may contain legally privileged information. If you are not the intended recipient, or believe you received this communication in error, please delete it immediately, do not copy, and notify the sender. Thank you.

---

**From:** Starfield, Lawrence  
**Sent:** Wednesday, April 03, 2019 7:01 PM  
**To:** Susan Bodine ([bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)) <[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>  
**Subject:** Houston

Susan,

# Ex. 5 AC/AWP/DP

Larry  
This message is CONFIDENTIAL, and may contain legally privileged information. If you are not the intended recipient, or believe you received this communication in error, please delete it immediately, do not copy, and notify the sender.  
Thank you.

Message

---

**From:** Porter, Amy [Porter.Amy@epa.gov]  
**Sent:** 6/5/2019 6:53:16 PM  
**To:** Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]  
**Subject:** RE: Revised SEP Note to Claire Murray -- as of 2:23

LOL!

---

**From:** Kelley, Rosemarie  
**Sent:** Wednesday, June 05, 2019 2:53 PM  
**To:** Porter, Amy <Porter.Amy@epa.gov>  
**Subject:** RE: Revised SEP Note to Claire Murray -- as of 2:23

Thanks. I'm in a meeting with them right now so it would be awkward for me to send now.

Rosemarie

---

**From:** Porter, Amy  
**Sent:** Wednesday, June 05, 2019 2:51 PM  
**To:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>  
**Subject:** RE: Revised SEP Note to Claire Murray -- as of 2:23

Will do.

---

**From:** Kelley, Rosemarie  
**Sent:** Wednesday, June 05, 2019 2:49 PM  
**To:** Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>  
**Subject:** RE: Revised SEP Note to Claire Murray -- as of 2:23

I made one small change below. Otherwise it looks good.

Amy – could you send this email to Susan and Larry? Thanks.

Rosemarie

---

**From:** Makepeace, Caroline  
**Sent:** Wednesday, June 05, 2019 2:34 PM  
**To:** Porter, Amy <Porter.Amy@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>  
**Subject:** RE: Revised SEP Note to Claire Murray -- as of 2:23

Please see proposed edits below, in red. I think the following addresses your concern, Rosemarie, if it was about what

## Ex. 5 AC/DP

Claire—

# Ex. 5 AC/DP

Again, my thanks for the recent meeting and thoughtful discussion of this important issue. I hope that we may hear from your soon so that we can move our judicial cases forward and address environmental violations in a timely manner.

Please let me know if I can provide any further information.

Susan

Caroline Makepeace  
Senior Counsel  
Office of Civil Enforcement

US Environmental Protection Agency  
202-564-6012

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---

**From:** Porter, Amy  
**Sent:** Wednesday, June 05, 2019 12:50 PM  
**To:** Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>  
**Subject:** RE: Revised SEP Note to Claire Murray

Rosemarie – I just saw your email

**Ex. 5 AC/DP**

Can you please be more specific?

Thanks  
Amy

---

**From:** Makepeace, Caroline  
**Sent:** Wednesday, June 05, 2019 10:26 AM  
**To:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>  
**Subject:** Revised SEP Note to Claire Murray

Revised per Larry's comments. I cleaned up some typos and made one substantive change to the sentence in red below

**Ex. 5 AC/DP**

Claire—

**Ex. 5 AC/DP**



# Ex. 5 AC/DP

Please let me know if I can provide any further information.

Susan

Caroline Makepeace  
Senior Counsel  
Office of Civil Enforcement  
US Environmental Protection Agency  
202-564-6012

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Message

---

**From:** Buterbaugh, Kristin [Buterbaugh.Kristin@epa.gov]  
**Sent:** 6/5/2019 4:58:08 PM  
**To:** Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Koslow, Karin [Koslow.Karin@epa.gov]  
**Subject:** Tentative Agenda for June OCE All Hands

1. New hires and interns/law clerks
2. Trainings
3. Reminder to run EJscreens; importance
4. Diversity and Inclusion
5. SEP update
6. DOJ/EPA MOU
7. Budget
8. Ethics
9. Case
  - a. Chevron (WCED)
  - Ex. 7(A)**
  - c. NGL (AED)

**Kristin Buterbaugh**

Special Assistant  
OECA - Office of Civil Enforcement  
U.S. Environmental Protection Agency  
WJC South 3119C  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460  
(202) 564-4479  
[Buterbaugh.Kristin@epa.gov](mailto:Buterbaugh.Kristin@epa.gov)

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Message

---

**From:** Miller, Wendy (ENRD) [Wendy.Miller@usdoj.gov]  
**Sent:** 4/15/2019 7:19:50 PM  
**To:** Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Makepeace, Caroline [Makepeace.Caroline@epa.gov]; Shiffman, Cari [Shiffman.Cari@epa.gov]  
**CC:** bruce.gelber@usdoj.gov; karen.dworkin@usdoj.gov; justin.smith@usdoj.gov  
**Subject:** Briefing Papers for the Third-Party Payments and SEPs Briefing on Friday, April 19, 2019 at 10:00 A.M.  
**Attachments:** LPS-#268841-v1-TPP\_Briefing\_Paper\_041519\_External.DOCX; LPS-#268842-v1-SEPs\_Briefing\_Paper\_041519\_External.DOCX

CLOSE-HOLD MATERIALS ATTACHED

Hi everyone. Attached please find the two briefing papers we have prepared for this briefing, which is now scheduled for Friday, April 19, 2019, at 10 a.m. We aren't sending the attachments referenced in the papers, which are huge and nearly all of which you have. A couple of the attachments are longstanding internal documents for us.

We would appreciate your keeping the briefing papers close hold.

We currently plan to spend about three-quarters of the briefing on SEPs.

Thanks very much.

Wendy J. Miller  
Senior Counsel  
Law and Policy Section  
Environment and Natural Resources Division  
Department of Justice  
Phone: 202-616-6557  
Email: [Wendy.Miller@usdoj.gov](mailto:Wendy.Miller@usdoj.gov)

Please note that this message and any attachments may be confidential and subject to privilege.

---

**From:** Gelber, Bruce (ENRD) <BGelber@ENRD.USDOJ.GOV>  
**Sent:** Monday, April 8, 2019 11:53 AM  
**To:** Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Mariani, Tom (ENRD) <TMariani@ENRD.USDOJ.GOV>  
**Cc:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Heminger, Justin (ENRD) <JHeminger2@ENRD.USDOJ.GOV>; Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV>; Smith, Justin (ENRD) <JSmith2@ENRD.USDOJ.GOV>; Miller, Wendy (ENRD) <WMiller@ENRD.USDOJ.GOV>; Wardzinski, Karen (ENRD) <KWardzinsk@ENRD.USDOJ.GOV>  
**Subject:** RE: Briefing on SEPs

Yes. You are invited. Jeff now has a conflict on Friday. Meeting will probably be moved to Thursday or into next week. Stay tuned.

Justin – can you let EPA know when meeting is rescheduled. Thanks

---

**From:** Starfield, Lawrence <[Starfield.Lawrence@epa.gov](mailto:Starfield.Lawrence@epa.gov)>  
**Sent:** Monday, April 8, 2019 10:19 AM  
**To:** Gelber, Bruce (ENRD) <[BGelber@ENRD.USDOJ.GOV](mailto:BGelber@ENRD.USDOJ.GOV)>; Mariani, Tom (ENRD) <[TMariani@ENRD.USDOJ.GOV](mailto:TMariani@ENRD.USDOJ.GOV)>  
**Cc:** Kelley, Rosemarie <[Kelley.Rosemarie@epa.gov](mailto:Kelley.Rosemarie@epa.gov)>; Shiffman, Cari <[Shiffman.Cari@epa.gov](mailto:Shiffman.Cari@epa.gov)>  
**Subject:** Briefing on SEPs

Bruce and Tom,

I understand that Susan and I (and OCE, I hope) are invited to the briefing for Jeff on Friday re: SEPs – correct? Could you have someone send Cari Shiffman the details? She is at 202-564-2898. Thanks.

Larry

Message

---

**From:** Porter, Amy [Porter.Amy@epa.gov]  
**Sent:** 4/1/2019 8:02:19 PM  
**To:** Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]  
**Subject:** RE: Has OLC ever opined on SEP policy?

OK I'll follow up. Caroline is not answering. (she is on AL)

---

**From:** Kelley, Rosemarie  
**Sent:** Monday, April 01, 2019 4:01 PM  
**To:** Porter, Amy <Porter.Amy@epa.gov>  
**Subject:** RE: Has OLC ever opined on SEP policy?

No, but this is not a rush. The conversation has moved on.

---

**From:** Porter, Amy  
**Sent:** Monday, April 01, 2019 4:01 PM  
**To:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
**Subject:** RE: Has OLC ever opined on SEP policy?

Or is he with you?

---

**From:** Kelley, Rosemarie  
**Sent:** Monday, April 01, 2019 3:59 PM  
**To:** Porter, Amy <Porter.Amy@epa.gov>  
**Subject:** RE: Has OLC ever opined on SEP policy?

On DOJ call now. SEPs are an issue for Jeff Clark.

---

**From:** Porter, Amy  
**Sent:** Monday, April 01, 2019 3:58 PM  
**To:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
**Subject:** RE: Has OLC ever opined on SEP policy?

I don't know but will check with Caroline.

---

**From:** Kelley, Rosemarie  
**Sent:** Monday, April 01, 2019 3:51 PM  
**To:** Porter, Amy <Porter.Amy@epa.gov>  
**Subject:** Has OLC ever opined on SEP policy?

Regards,  
Rosemarie A. Kelley, Director  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
202-564-4014

Message

---

**From:** Porter, Amy [Porter.Amy@epa.gov]  
**Sent:** 4/1/2019 8:00:10 PM  
**To:** Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]  
**Subject:** RE: Has OLC ever opined on SEP policy?

Oh shoot, Caroline is out. Calling Fog

---

**From:** Kelley, Rosemarie  
**Sent:** Monday, April 01, 2019 3:59 PM  
**To:** Porter, Amy <Porter.Amy@epa.gov>  
**Subject:** RE: Has OLC ever opined on SEP policy?

On DOJ call now. SEPs are an issue for Jeff Clark.

---

**From:** Porter, Amy  
**Sent:** Monday, April 01, 2019 3:58 PM  
**To:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
**Subject:** RE: Has OLC ever opined on SEP policy?

I don't know but will check with Caroline.

---

**From:** Kelley, Rosemarie  
**Sent:** Monday, April 01, 2019 3:51 PM  
**To:** Porter, Amy <Porter.Amy@epa.gov>  
**Subject:** Has OLC ever opined on SEP policy?

Regards,  
Rosemarie A. Kelley, Director  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
202-564-4014

Message

---

**From:** Porter, Amy [Porter.Amy@epa.gov]  
**Sent:** 4/1/2019 7:59:39 PM  
**To:** Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]  
**Subject:** RE: Has OLC ever opined on SEP policy?

Calling Caroline now

---

**From:** Kelley, Rosemarie  
**Sent:** Monday, April 01, 2019 3:59 PM  
**To:** Porter, Amy <Porter.Amy@epa.gov>  
**Subject:** RE: Has OLC ever opined on SEP policy?

On DOJ call now. SEPs are an issue for Jeff Clark.

---

**From:** Porter, Amy  
**Sent:** Monday, April 01, 2019 3:58 PM  
**To:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
**Subject:** RE: Has OLC ever opined on SEP policy?

I don't know but will check with Caroline.

---

**From:** Kelley, Rosemarie  
**Sent:** Monday, April 01, 2019 3:51 PM  
**To:** Porter, Amy <Porter.Amy@epa.gov>  
**Subject:** Has OLC ever opined on SEP policy?

Regards,  
Rosemarie A. Kelley, Director  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
202-564-4014

Message

---

**From:** Koslow, Karin [Koslow.Karin@epa.gov]  
**Sent:** 9/9/2019 5:45:04 PM  
**To:** Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]  
**Subject:** My comments in redline - FW: Wheeler Fact Sheet on SEPs  
**Attachments:** OECA SEPs in Muni Cases Fact Sheet.v2.docx

**Importance:** High

I've included my comments in redline, but you may not agree, so sending to you to expedite getting this back to Caroline & John.

I also note that Susan asked for a fact sheet on DOJ's policy – that's not what this is. I wonder if we also need to develop a true "fact sheet" that summarizes the key relevant elements of the policy, as background for the Administrator.

-Karin

Karin Koslow  
Deputy Director, Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
Desk: (202) 564-0171  
Cell: (202) 716-5645  
WJC South Room 3142D

---

**From:** Makepeace, Caroline <Makepeace.Caroline@epa.gov>  
**Sent:** Monday, September 09, 2019 12:52 PM  
**To:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>  
**Cc:** Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>  
**Subject:** Wheeler Fact Sheet on SEPs

Please see attached draft. John has already reviewed and made helpful comments (Thx!)

Caroline Makepeace  
Senior Counsel  
Office of Civil Enforcement  
US Environmental Protection Agency  
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.



Message

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**From:** Makepeace, Caroline [Makepeace.Caroline@epa.gov]  
**Sent:** 9/6/2019 7:42:17 PM  
**To:** Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]  
**CC:** Porter, Amy [Porter.Amy@epa.gov]; Koslow, Karin [Koslow.Karin@epa.gov]; Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]  
**Subject:** Re: SEP **Ex. 5 Attorney Client (AC)**

Sounds like a good plan!

Sent from my iPhone

On Sep 6, 2019, at 3:39 PM, Kelley, Rosemarie <Kelley.Rosemarie@epa.gov> wrote:

**Ex. 5 Attorney Client (AC)**

Rosemarie

**From:** Makepeace, Caroline <Makepeace.Caroline@epa.gov>  
**Sent:** Friday, September 06, 2019 3:02 PM  
**To:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
**Cc:** Porter, Amy <Porter.Amy@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>  
**Subject:** Re: SEP **Ex. 5 Attorney Client (AC)**

**Ex. 5 Attorney Client (AC)**

Sent from my iPhone

On Sep 6, 2019, at 2:55 PM, Makepeace, Caroline <Makepeace.Caroline@epa.gov> wrote:

**Ex. 5 Attorney Client (AC)**

**Ex. 5 AC/AWP/DP**

**Ex. 5 AC/AWP/DP**

# Ex. 5 AC/DP

I'm happy to reach out to anyone you would like (I never did call Karen yesterday, since I knew you'd be talking) and work on language to reflect our clarifications with DOJ, but I'm out today and running around a bit.

Sent from my iPhone

On Sep 6, 2019, at 2:01 PM, Kelley, Rosemarie <[Kelley.Rosemarie@epa.gov](mailto:Kelley.Rosemarie@epa.gov)> wrote:

## Ex. 5 Attorney Client (AC)

Rosemarie

---

**From:** Dworkin, Karen (ENRD) <[Karen.Dworkin@usdoj.gov](mailto:Karen.Dworkin@usdoj.gov)>

**Sent:** Friday, September 06, 2019 9:56 AM

**To:** Kelley, Rosemarie <[Kelley.Rosemarie@epa.gov](mailto:Kelley.Rosemarie@epa.gov)>

**Subject:** SEP **Ex. 5 Attorney Client (AC)**

# Ex. 5 AC/DP

To \_\_\_\_

**Ex. 5 AC/DP**

**Ex. 5 AC/DP**

# Ex. 5 AC/DP

**From:** Kelley, Rosemarie <[Kelley.Rosemarie@epa.gov](mailto:Kelley.Rosemarie@epa.gov)>  
**Sent:** Thursday, September 5, 2019 11:26 AM  
**To:** Dworkin, Karen (ENRD) <[KDworkin@ENRD.USDOJ.GOV](mailto:KDworkin@ENRD.USDOJ.GOV)>  
**Subject:** RE: Nassau

Karen—

## Ex. 5 AC/AWP/DP

## Ex. 5 Attorney Client (AC)

## Ex. 5 Attorney Client (AC)

Rosemarie

**From:** Dworkin, Karen (ENRD) <Karen.Dworkin@usdoj.gov>  
**Sent:** Thursday, September 05, 2019 10:04 AM  
**To:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
**Subject:** RE: Nassau

## Ex. 5 AC/AWP/DP

**From:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
**Sent:** Thursday, September 5, 2019 7:36 AM  
**To:** Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV>  
**Subject:** Re: Nassau

Great. Thanks

Rosemarie

On Sep 5, 2019, at 7:35 AM, Dworkin, Karen (ENRD)  
<Karen.Dworkin@usdoj.gov> wrote:

Hi. Got your message. I think that's right, but will be able to confirm this morning, and will get back to you later today.

Message

**From:** Makepeace, Caroline [Makepeace.Caroline@epa.gov]  
**Sent:** 9/6/2019 7:21:53 PM  
**To:** Porter, Amy [Porter.Amy@epa.gov]  
**CC:** Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Koslow, Karin [Koslow.Karin@epa.gov]; Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]  
**Subject:** Re: Hearing Binder Fact Sheet Check-in

## Ex. 5 AC/DP

Sent from my iPhone

On Sep 6, 2019, at 2:40 PM, Porter, Amy <Porter.Amy@epa.gov> wrote:

## Ex. 5 AC/DP

Thanks  
Amy

---

**From:** Bodine, Susan <bodine.susan@epa.gov>  
**Sent:** Friday, September 06, 2019 2:38 PM  
**To:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>  
**Cc:** Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Mirza, Sabah <Mirza.Sabah@epa.gov>; Emmerson, Caroline <Emmerson.Caroline@epa.gov>  
**Subject:** FW: Hearing Binder Fact Sheet Check-in

Can we do a new fact sheet on the DOJ SEP policy? For next week (not today).

Susan

---

**From:** Rodrick, Christian <rodrick.christian@epa.gov>  
**Sent:** Friday, September 6, 2019 2:30 PM  
**To:** Idsal, Anne <idsal.anne@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Ross, David P <ross.davidp@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; McIntosh, Chad <mcintosh.chad@epa.gov>; Dunn, Alexandra <dunn.alexandra@epa.gov>; Dunlap, David <dunlap.david@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Kasper, Amanda <Kasper.Amanda@epa.gov>  
**Cc:** Brazauskas, Joseph <brazauskas.joseph@epa.gov>; Kolb, John (JohnMark) <kolb.john@epa.gov>; Struhar, Kirby <struhar.kirby@epa.gov>  
**Subject:** Hearing Binder Fact Sheet Check-in

All,

Thank you all again for all the timely assistance you and your teams have provided OCIR in preparing and updating the Administrator's hearing prep binder. I understand there was a call

this week to continually update fact sheets as actions are taken or news arises. Many of your teams have worked to provide me updates on a number of topics already this week, however, in case you have a fact sheet you would like updated in the binder, OCIR needs to have that update by 3:30PM today in order to get it into the Administrator's hearing binder before the weekend. If 3:30 is impossible, let me know and we can update it next week before hearing prep begins. If you have any questions or concerns, just reach out.

Thanks again,

**Christian Rodrick**

*Director of House Relations, OCIR*

U.S. Environmental Protection Agency

O: (202) 564-4828

C: Ex. 6

Message

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**From:** Makepeace, Caroline [Makepeace.Caroline@epa.gov]  
**Sent:** 9/4/2019 1:54:23 PM  
**To:** Koslow, Karin [Koslow.Karin@epa.gov]  
**CC:** Porter, Amy [Porter.Amy@epa.gov]; Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]  
**Subject:** Re: **Ex. 5 Attorney Client (AC)**

Good to know. We should talk about the timeframes on this, and how to work with the case teams and DOJ/AUSAs on these.

Sent from my iPhone

On Sep 4, 2019, at 8:28 AM, Koslow, Karin <Koslow.Karin@epa.gov> wrote:

## Ex. 5 AC/DP

Thanks,  
Karin

Karin Koslow  
Deputy Director, Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
202-564-0171

On Sep 3, 2019, at 6:33 PM, Porter, Amy <Porter.Amy@epa.gov> wrote:

Rosemarie –

Did you get any feedback from Susan regarding her meeting with Jeff last week?

## Ex. 5 AC/DP

Thanks  
Amy

---

**From:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
**Sent:** Tuesday, September 03, 2019 6:24 PM  
**To:** Bodine, Susan <bodine.susan@epa.gov>  
**Cc:** Porter, Amy <Porter.Amy@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>  
**Subject:** FW: **Ex. 5 Attorney Client (AC)**

Susan –

FYI – This is the guidance that EES gave their staff re: SEPs.



Rosemarie

---

**From:** Dworkin, Karen (ENRD) <Karen.Dworkin@usdoj.gov>  
**Sent:** Tuesday, September 03, 2019 3:11 PM  
**To:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>  
**Cc:** Mariani, Tom (ENRD) <Tom.Mariani@usdoj.gov>  
**Subject:** **Ex. 5 Attorney Client (AC)**

Attorney-Client Privileged Communication

**Ex. 5 Attorney Client (AC)**

# **Ex. 5 Attorney Client (AC)**

Karen.

Message

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**From:** Conway, Timothy [Conway.Tim@epa.gov]  
**Sent:** 8/28/2019 1:49:02 AM  
**To:** Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]  
**Subject:** Re: DOJ just issued a new memo on Using Supplemental Environmental Projects ("SEPs") in Settlements with State and Local Governments

Thanks— tough situation

Sent from my iPhone

On Aug 27, 2019, at 7:51 PM, Kelley, Rosemarie <[Kelley.Rosemarie@epa.gov](mailto:Kelley.Rosemarie@epa.gov)> wrote:

All --

Here is the desk statement we developed to respond to questions about DOJ's new policy on SEPs:

Questions regarding DOJ's 8/21/19 policy on supplemental environmental projects (SEPs) should be directed to DOJ's Office of Public Affairs. A SEP is a voluntary beneficial environmental project that goes beyond compliance requirements and that is taken into consideration by the government when setting an appropriate penalty amount. EPA has not changed its 2015 policy regarding SEPs in settlement agreements and will continue to support SEPs in administrative cases.

The OECA communications director will share it with your PADs but I want to make sure you have it as well.

Rosemarie Kelley, Director  
Office of Civil Enforcement  
OECA

---

**From:** Kelley, Rosemarie  
**Sent:** Wednesday, August 21, 2019 1:54 PM  
**To:** Regional Counsels and Deputies <[Regional\\_Counsels\\_and\\_Deputies@epa.gov](mailto:Regional_Counsels_and_Deputies@epa.gov)>; OECA-OCE-MANAGERS <[OECAOCEMANAGERS@epa.gov](mailto:OECAOCEMANAGERS@epa.gov)>; Makepeace, Caroline <[Makepeace.Caroline@epa.gov](mailto:Makepeace.Caroline@epa.gov)>; ECAD Directors and Deputies <[ECAD\\_Directors\\_and\\_Deputies@epa.gov](mailto:ECAD_Directors_and_Deputies@epa.gov)>; OECA Office Directors and Deputy Directors <[OECA\\_Office\\_Directors\\_and\\_Deputy\\_Directors@epa.gov](mailto:OECA_Office_Directors_and_Deputy_Directors@epa.gov)>; Starfield, Lawrence <[Starfield.Lawrence@epa.gov](mailto:Starfield.Lawrence@epa.gov)>; Susan Bodine ([bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)) <[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>  
**Cc:** Buterbaugh, Kristin <[Buterbaugh.Kristin@epa.gov](mailto:Buterbaugh.Kristin@epa.gov)>; Shiffman, Cari <[Shiffman.Cari@epa.gov](mailto:Shiffman.Cari@epa.gov)>; Mirza, Sabah <[Mirza.Sabah@epa.gov](mailto:Mirza.Sabah@epa.gov)>  
**Subject:** RE: DOJ just issued a new memo on Using Supplemental Environmental Projects ("SEPs") in Settlements with State and Local Governments

I apologize for not including the link. Here it is:

<https://www.justice.gov/enrd/page/file/1197056/download>

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**From:** Kelley, Rosemarie

**Sent:** Wednesday, August 21, 2019 1:26 PM

**To:** Regional Counsels and Deputies <[Regional\\_Counsels\\_and\\_Deputies@epa.gov](mailto:Regional_Counsels_and_Deputies@epa.gov)>; OECA-OCE-MANAGERS <[OECAOCEMANAGERS@epa.gov](mailto:OECAOCEMANAGERS@epa.gov)>; Makepeace, Caroline <[Makepeace.Caroline@epa.gov](mailto:Makepeace.Caroline@epa.gov)>; ECAD Directors and Deputies <[ECAD\\_Directors\\_and\\_Deputies@epa.gov](mailto:ECAD_Directors_and_Deputies@epa.gov)>; OECA Office Directors and Deputy Directors <[OECA\\_Office\\_Directors\\_and\\_Deputy\\_Directors@epa.gov](mailto:OECA_Office_Directors_and_Deputy_Directors@epa.gov)>; Starfield, Lawrence <[Starfield.Lawrence@epa.gov](mailto:Starfield.Lawrence@epa.gov)>; Susan Bodine ([bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)) <[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>

**Cc:** Buterbaugh, Kristin <[Buterbaugh.Kristin@epa.gov](mailto:Buterbaugh.Kristin@epa.gov)>

**Subject:** DOJ just issued a new memo on Using Supplemental Environmental Projects ("SEPs") in Settlements with State and Local Governments

All—

I want to let you know that DOJ just issued a memo on Using Supplemental Environmental Projects ("SEPs") in Settlements with State and Local Governments minutes ago.

More to come on next steps, but I thought you should know about this memo.

Rosemarie

Regards,

Rosemarie A. Kelley, Director

Office of Civil Enforcement

Office of Enforcement and Compliance Assurance

202-564-4014



Message

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**From:** Mirza, Sabah [Mirza.Sabah@epa.gov]  
**Sent:** 8/27/2019 3:15:49 PM  
**To:** Hull, George [Hull.George@epa.gov]; Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]  
**CC:** Porter, Amy [Porter.Amy@epa.gov]; Buterbaugh, Kristin [Buterbaugh.Kristin@epa.gov]; Shiffman, Cari [Shiffman.Cari@epa.gov]  
**Subject:** RE: ED/RC Call Materials for August 2019

Thanks George!

Thanks,  
Sabah

~~~~~  
Sabah Mirza, Special Assistant
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW, 3207E WJC South
Washington, DC 20460
Office: 202-564-8176

From: Hull, George <Hull.George@epa.gov>
Sent: Tuesday, August 27, 2019 10:52 AM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Mirza, Sabah <Mirza.Sabah@epa.gov>
Cc: Porter, Amy <Porter.Amy@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>
Subject: RE: ED/RC Call Materials for August 2019

Here is the Desk Statement. – George

Questions regarding DOJ's 8/21/19 policy on supplemental environmental projects (SEPs) should be directed to DOJ's Office of Public Affairs. A SEP is a voluntary beneficial environmental project that goes beyond compliance requirements and that is taken into consideration by the government when setting an appropriate penalty amount. EPA has not changed its 2015 policy regarding SEPs in settlement agreements and will continue to support SEPs in administrative cases.

From: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Sent: Tuesday, August 27, 2019 9:27 AM
To: Mirza, Sabah <Mirza.Sabah@epa.gov>
Cc: Porter, Amy <Porter.Amy@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Hull, George <Hull.George@epa.gov>
Subject: RE: ED/RC Call Materials for August 2019

Sabah --

Susan will know what to say if you send her a note saying that OCE would like Susan to stress the points we made in the desk statement.

George – could you share the desk statement with Sabah?

Rosemarie

From: Mirza, Sabah <Mirza.Sabah@epa.gov>
Sent: Tuesday, August 27, 2019 9:22 AM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Cc: Porter, Amy <Porter.Amy@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>
Subject: RE: ED/RC Call Materials for August 2019

Hi Rosemarie, I will add this on Susan's notes. Will Susan know what to say if I just write SEPs? Or should I add a note saying "OCE would like to stress on the points they made on SEPs"

1) General Updates (15 min)

- **Topic Leader:** Susan Bodine, OECA
- **Description:** Sharing new developments and general updates with the EDs/RCs.
 - Circuit Rider Proposal
 - VTC Feedback
 - Focus on End-of-Year
 - SEPs

Thanks,
Sabah

~~~~~  
Sabah Mirza, Special Assistant  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW, 3207E WJC South  
Washington, DC 20460  
Office: 202-564-8176

---

**From:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
**Sent:** Tuesday, August 27, 2019 8:53 AM  
**To:** Mirza, Sabah <Mirza.Sabah@epa.gov>  
**Cc:** Porter, Amy <Porter.Amy@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>  
**Subject:** Re: ED/RC Call Materials for August 2019

Sabah-

We would like to add SEPs to Susan's update at the ED/RC meeting. We would like her to stress the points we made in our desk statement. No need to revise the agenda to add this as a topic.

Rosemarie

On Aug 26, 2019, at 10:43 PM, Mirza, Sabah <Mirza.Sabah@epa.gov> wrote:

Hi all,

Please see attached materials for the ED/RC call on August 28 at 2pm EST. If you didn't receive the meeting invite, please let me know.

Thanks,  
Sabah

~~~~~

Sabah Mirza, Special Assistant
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW, 3207E WJC South
Washington, DC 20460
Office: 202-564-8176

<ED RC August 2019 V1.pdf>

Message

From: Dworkin, Karen (ENRD) [Karen.Dworkin@usdoj.gov]
Sent: 8/30/2019 5:02:04 PM
To: Porter, Amy [Porter.Amy@epa.gov]; Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: RE: SEP follow up

I know Caroline is out. What about Rosemarie?

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

From: Porter, Amy <Porter.Amy@epa.gov>
Sent: Friday, August 30, 2019 12:59 PM
To: Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: SEP follow up

I'm free until 2.

From: Dworkin, Karen (ENRD) <Karen.Dworkin@usdoj.gov>
Sent: Friday, August 30, 2019 12:36 PM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Cc: Porter, Amy <Porter.Amy@epa.gov>
Subject: RE: SEP follow up

I'm back. Would 1:00 work for you guys? I don't think it will take long. We are working to incorporate all your comments in one fashion or another.

From: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Sent: Friday, August 30, 2019 10:20 AM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV>
Cc: Porter, Amy <Porter.Amy@epa.gov>
Subject: RE: SEP follow up

Karen –

Would 11 am work for a call with Amy and me?

Rosemarie

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Friday, August 30, 2019 10:03 AM
To: karen.dworkin@usdoj.gov
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>
Subject: Re: SEP follow up

Hi Karen,

Sorry I missed this yesterday. I'm out and on the move today, but Rosemarie is back — and able to loop back with Susan and Larry if needed. Also, Amy Porter was in the meeting with Susan and Larry, and she is in. John is out. If you have trouble connecting, just shoot me an email and I'll find a way to get back to you.

Have a great weekend!

Sent from my iPhone

On Aug 29, 2019, at 6:09 PM, Dworkin, Karen (ENRD) <Karen.Dworkin@usdoj.gov> wrote:

Thanks. do you have a minute to chat about these comments?

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>

Sent: Thursday, August 29, 2019 4:48 PM

To: Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>

Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>

Subject: RE: SEP follow up

Hi Karen,

These look pretty good, but we discussed with Susan and Larry and have some thoughts for tweaks.

Ex. 5 AC/DP

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Dworkin, Karen (ENRD) <Karen.Dworkin@usdoj.gov>

Sent: Thursday, August 29, 2019 2:37 PM

To: Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>

Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>

Subject: SEP follow up

Hi. I see Rosemarie is out today. Forwarding this for any info you have on the call yesterday, and any initial reactions to the below.

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

From: Dworkin, Karen (ENRD)

Sent: Thursday, August 29, 2019 12:56 PM

To: 'Kelley, Rosemarie' <Kelley.Rosemarie@epa.gov>

Subject: time for a SEP follow up call today?

Ex. 5 Attorney Client (AC)

Ex. 5 AC/DP

Message

From: Kelley, Rosemarie [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=23B7C900323047FCA012DF62C58C4D22-RKELLEY]
Sent: 8/23/2019 8:40:03 PM
To: Koslow, Karin [Koslow.Karin@epa.gov]
Subject: RE: desk statement - FLAGGING CONCERNS

Agree and as you may have seen, Susan struck the language.

Rosemarie

From: Koslow, Karin <Koslow.Karin@epa.gov>
Sent: Friday, August 23, 2019 1:52 PM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Subject: Fwd: desk statement - FLAGGING CONCERNS
Importance: High

Ex. 5 Deliberative Process (DP)

Karin Koslow
Deputy Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
202-564-0171

Begin forwarded message:

From: "Hull, George" <Hull.George@epa.gov>
Date: August 23, 2019 at 11:50:53 AM EDT
To: "Starfield, Lawrence" <Starfield.Lawrence@epa.gov>, "Bodine, Susan" <bodine.susan@epa.gov>, "Kelley, Rosemarie" <Kelley.Rosemarie@epa.gov>, "Koslow, Karin" <Koslow.Karin@epa.gov>
Cc: "Egan, Patrick" <egan.patrick@epa.gov>
Subject: RE: desk statement

Susan, Larry, Rosemarie and Karin,

Please find below for your review a draft desk statement to be used for press inquiries we may receive

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Message

From: Kelley, Rosemarie [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=23B7C900323047FCA012DF62C58C4D22-RKELLEY]
Sent: 8/19/2019 11:33:50 PM
To: Koslow, Karin [Koslow.Karin@epa.gov]
Subject: Re: SEPs

I don't think if that makes sense to discuss with WED. I think we should invite Caroline to join us for the weekly with Larry tomorrow at 11.

Rosemarie

On Aug 19, 2019, at 7:25 PM, Koslow, Karin <Koslow.Karin@epa.gov> wrote:

Should I ask Caroline to come to WED General tomorrow so we can discuss..?

Karin Koslow
Deputy Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
202-564-0171

Begin forwarded message:

From: "Makepeace, Caroline" <Makepeace.Caroline@epa.gov>
Date: August 19, 2019 at 4:25:06 PM EDT
To: "Kelley, Rosemarie" <Kelley.Rosemarie@epa.gov>
Cc: "Fogarty, Johnpc" <Fogarty.Johnpc@epa.gov>, "Buterbaugh, Kristin" <Buterbaugh.Kristin@epa.gov>, "Koslow, Karin" <Koslow.Karin@epa.gov>
Subject: Re: SEPs

Ex. 5 AC/DP

Sent from my iPhone

On Aug 19, 2019, at 3:36 PM, Kelley, Rosemarie <Kelley.Rosemarie@epa.gov> wrote:

Ex. 5 AC/DP

Rosemarie

From: Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Sent: Monday, August 19, 2019 3:31 PM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin
<Koslow.Karin@epa.gov>
Subject: SEPs

Rosemarie/Karin,

Ex. 5 AC/DP

To discuss.

Larry

This message is CONFIDENTIAL, and may contain legally privileged information. If you are not the intended recipient, or believe you received this communication in error, please delete it immediately, do not copy, and notify the sender. Thank you.

Message

From: Kelley, Rosemarie [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=23B7C900323047FCA012DF62C58C4D22-RKELLEY]
Sent: 7/8/2019 2:10:59 PM
To: Buterbaugh, Kristin [Buterbaugh.Kristin@epa.gov]
Subject: Fw: **Ex. 5 AC/DP**

Rosemarie Kelley, Director
Office of Civil Enforcement
OECA

From: Fried, Gregory
Sent: Wednesday, July 3, 2019 2:35 PM
To: Kelley, Rosemarie
Cc: Brooks, Phillip; Chapman, Apple; Koslow, Karin; Buterbaugh, Kristin
Subject: Re: **Ex. 5 AC/DP**

Ex. 5 AC/AWP

Sent from my iPhone

On Jul 3, 2019, at 1:52 PM, Kelley, Rosemarie <Kelley.Rosemarie@epa.gov> wrote:

Greg –

Ex. 5 AC/AWP

Rosemarie

From: Palmer, Leif
Sent: Wednesday, July 03, 2019 11:10 AM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Cc: Koslow, Karin <Koslow.Karin@epa.gov>; R4ORC.SPECIALASSISTANT <R4ORC.SPECIALASSISTANT@epa.gov>
Subject: RE: **Ex. 5 AC/DP**

Rosemarie & Karin

Ex. 5 AC/AWP

Ex. 5 AC/AWP

If you have any questions please cc: Matt Hicks (special assistant) in any emails to me.

From: Kelley, Rosemarie
Sent: Monday, July 1, 2019 3:24 PM
To: Regional Counsels and Deputies <Regional_Counsels_and_Deputies@epa.gov>
Cc: Koslow, Karin <Koslow.Karin@epa.gov>
Subject: **Ex. 5 AC/DP**

Regional Counsels,

Happy July 1! Given that it is the beginning of the 4th quarter of FY19, Karin and I would

Ex. 5 AC/DP

Rosemarie

Regards,
Rosemarie A. Kelley, Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
202-564-4014

Message

From: Kelley, Rosemarie [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=23B7C900323047FCA012DF62C58C4D22-RKELLEY]
Sent: 7/2/2019 8:52:37 PM
To: Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: FW: SEPs in Northport NY case

FYI

From: Schaaf, Eric
Sent: Tuesday, July 02, 2019 4:22 PM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Simon, Paul <Simon.Paul@epa.gov>
Cc: Feinmark, Phyllis <Feinmark.Phyllis@epa.gov>; Shapiro, Naomi <Shapiro.Naomi@epa.gov>; Sawyer, William <Sawyer.William@epa.gov>
Subject: RE: SEPs in Northport NY case

Rosemarie – Thanks for the follow-up. We'll move ahead with Northport and await further feedback on Nassau County.

From: Kelley, Rosemarie
Sent: Tuesday, July 2, 2019 3:52 PM
To: Schaaf, Eric <Schaaf.Eric@epa.gov>; Simon, Paul <Simon.Paul@epa.gov>
Subject: FW: SEPs in Northport NY case

Eric, Paul—

Ex. 5 AC/AWP/DP

Rosemarie

From: Bodine, Susan
Sent: Monday, July 01, 2019 1:25 PM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>; Theis, Joseph <Theis.Joseph@epa.gov>
Subject: RE: SEPs in Northport NY case

Okay with moving ahead this way.

Thanks,

Susa

From: Kelley, Rosemarie

Sent: Monday, July 1, 2019 1:05 PM

To: Bodine, Susan <bodine.susan@epa.gov>

Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>; Theis, Joseph <Theis.Joseph@epa.gov>

Subject: SEPs in Northport NY case

Susan—

Ex. 5 AC/AWP/DP

Rosemarie

Regards,

Rosemarie A. Kelley, Director

Office of Civil Enforcement

Office of Enforcement and Compliance Assurance

202-564-4014

Message

From: Kelley, Rosemarie [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=23B7C900323047FCA012DF62C58C4D22-RKELLEY]
Sent: 5/7/2019 2:55:48 PM
To: Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]
Subject: Larry

Larry

Ex. 5 Deliberative Process (DP)

Rosemarie

Message

From: Kelley, Rosemarie [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=23B7C900323047FCA012DF62C58C4D22-RKELLEY]
Sent: 4/5/2019 1:34:06 PM
To: Mariani, Tom (ENRD) [Tom.Mariani@usdoj.gov]
CC: Sullivan, Greg [Sullivan.Greg@epa.gov]; Loving, Shanita [Loving.Shanita@epa.gov]
Subject: Re: Upcoming (April 8) EPA-ENRD Monday Call —>

Tom-

Susan, Patrick and Larry are unavailable on Monday so we would like to reschedule.

The only item we have at this time is: **Ex. 7(A)**

Shanita- could you reach out to DOJ to reschedule? Thanks.

Rosemarie

> On Apr 3, 2019, at 12:11 AM, Mariani, Tom (ENRD) <Tom.Mariani@usdoj.gov> wrote:
>
> Hello, Everyone:
> Do you have any agenda proposals for the next EPA-ENRD Monday afternoon conference call?
> If so, please let me know. Thanks. TM

Message

From: Kelley, Rosemarie [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=23B7C900323047FCA012DF62C58C4D22-RKELLEY]
Sent: 6/27/2019 1:58:05 AM
To: Koslow, Karin [Koslow.Karin@epa.gov]; Pollins, Mark [Pollins.Mark@epa.gov]
CC: Buterbaugh, Kristin [Buterbaugh.Kristin@epa.gov]
Subject: Fw: Corpus Christi and SEP

FYI

Rosemarie Kelley, Director
Office of Civil Enforcement
OECA

From: Payne, James
Sent: Wednesday, June 26, 2019 9:56 PM
To: Kelley, Rosemarie; Starfield, Lawrence
Cc: Seager, Cheryl; McDonald, Scott; Welton, Patricia
Subject: Corpus Christi and SEP

Ex. 5 AC/AWP/DP

From: Herbert, Rusty
Sent: Wednesday, June 26, 2019 10:38 AM
To: Payne, James <payne.james@epa.gov>; McDonald, Scott <mcdonald.scott@epa.gov>; Welton, Patricia <Welton.Patricia@epa.gov>; Peters, Carol <Peters.Carol@epa.gov>
Subject: CC Status Update week of 6/26/2019

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Message

From: Kelley, Rosemarie [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=23B7C900323047FCA012DF62C58C4D22-RKELLEY]
Sent: 5/1/2019 8:23:34 PM
To: Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: FW: SEP talking points
Attachments: Possible Talking Points for meeting with Jesse Pannuccio 4 29 19 revised.docx

Caroline-

You should definitely borrow from these TPs.

Rosemarie

From: Starfield, Lawrence
Sent: Monday, April 29, 2019 2:03 PM
To: Bodine, Susan <bodine.susan@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>
Subject: SEP talking points

Susan,

OCE had a number of good revisions to the draft talking points on SEPs. The revised memo is attached.

Larry

Message

From: Kelley, Rosemarie [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=23B7C900323047FCA012DF62C58C4D22-RKELLEY]
Sent: 3/31/2019 6:55:38 PM
To: Mariani, Tom (ENRD) [Tom.Mariani@usdoj.gov]
Subject: Re: EPA-ENRD Conf. Call for Monday April 1: Any suggested changes to the agenda below (carried over from last week's cancelled meeting)? Thks. TM

It is a general topic - not related to any case.

Rosemarie

On Mar 30, 2019, at 10:01 PM, Mariani, Tom (ENRD) <Tom.Mariani@usdoj.gov> wrote:

Same case as last time or something else? TM

On Mar 30, 2019, at 4:28 PM, Kelley, Rosemarie <Kelley.Rosemarie@epa.gov> wrote:

Tom-

Ex. 5 AC/DP

Rosemarie

On Mar 27, 2019, at 5:21 PM, Mariani, Tom (ENRD) <Tom.Mariani@usdoj.gov> wrote:

Ex. 5 AC/AWP

Message

From: Kelley, Rosemarie [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=23B7C900323047FCA012DF62C58C4D22-RKELLEY]
Sent: 4/15/2019 11:04:45 PM
To: Buterbaugh, Kristin [Buterbaugh.Kristin@epa.gov]; Pollins, Mark [Pollins.Mark@epa.gov]
Subject: FW: Materials for discussion with DOJ on SEPs
Attachments: FINAL 2015 UPDATE TO SEP POLICY.pdf; sep annual results graph.pdf; LPS-#268841-v1-TPP_Briefing_Paper_041519_External (002).DOCX; LPS-#268842-v1-SEPs_Briefing_Paper_041519_External (002).DOCX

From: Fogarty, Johnpc
Sent: Monday, April 15, 2019 4:56 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Cc: Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>
Subject: Materials for discussion with DOJ on SEPs

Susan and Larry –

Attached are several materials in advance of the meeting with DOJ on Friday on SEPs.

First are two briefing papers (on SEPs and third-party payments), that were prepared by DOJ. These were just shared with us and we have not yet had a chance to review.

Second, also attached is a chart showing SEP annual results for the past ten years, and a copy of the current and consolidated SEP Policy (the “2015 Update”). We are also pulling together a variety of recent examples of SEPs which we will forward Wednesday, in advance of briefing you on all of this at the OCE general Thursday.

Ex. 5 AC/DP

Please let us know if you have any questions or would like other materials.

Message

From: Kelley, Rosemarie [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=23B7C900323047FCA012DF62C58C4D22-RKELLEY]
Sent: 9/6/2019 5:35:50 PM
To: Makepeace, Caroline [Makepeace.Caroline@epa.gov]; Chapman, Apple [Chapman.Apple@epa.gov]
CC: Koslow, Karin [Koslow.Karin@epa.gov]; Porter, Amy [Porter.Amy@epa.gov]; Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]
Subject: RE: re Mitigation

I have received this from Karen as well. She is not comfortable with me forwarding it (or the SEP email) so we're working on what I can share w/OCE and Regions.

Rosemarie

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Friday, September 06, 2019 12:30 PM
To: Chapman, Apple <Chapman.Apple@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>
Subject: Re: re Mitigation

Thanks. Apple! Hmm, we worked closely with DOJ on the language of the SEP instructions, but not the mitigation ones. Adding RK, AP, KK, and JF to close hold since we had heard about the mitigation guidelines but not seen this message (which was not "forwardable" out of DOJ)

Sent from my iPhone

On Sep 6, 2019, at 12:19 PM, Chapman, Apple <Chapman.Apple@epa.gov> wrote:

Close hold. I'm not sure if this was supposed to be forwarded out of DOJ but I thought you should see it.

Apple Chapman

Deputy Director, Air Enforcement Division
Office of Civil Enforcement
(202) 564-5666 or (202) 841-6076

From: Brooks, Phillip <Brooks.Phillip@epa.gov>
Sent: Tuesday, September 3, 2019 3:25 PM
To: Chapman, Apple <Chapman.Apple@epa.gov>
Subject: FW: re Mitigation

From: Weinischke, Bill (ENRD) [mailto:Bill.Weinischke@usdoj.gov]
Sent: Tuesday, September 03, 2019 3:21 PM
To: Brooks, Phillip <Brooks.Phillip@epa.gov>
Subject: Fwd: re Mitigation

Sent from my iPhone

Begin forwarded message:

From: "Thode, Anna (ENRD)" <AThode@ENRD.USDOJ.GOV>
Date: September 3, 2019 at 2:39:46 PM EDT
To: "Weinischke, Bill (ENRD)" <BWeinischk@ENRD.USDOJ.GOV>
Subject: re Mitigation
Maybe this is what you were alluding to.

From: Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV>
Sent: Friday, August 30, 2019 6:34 PM
To: ENRD-EES Section (includes field) <ENRD-EESSection_includesfield@ENRD.USDOJ.GOV>
Subject: Weekly Update

Hi, Everyone. Important updates re mitigation and SEPs are included in this week's update.

Ex. 5 AC/DP

2

Ex. 5 AC/DP

Ex. 5 AC/DP

Ex. 5 AC/DP

Ex. 5 AC/DP

3. **Supreme Court filing re availability of private restoration damages remedy for site undergoing CERCLA cleanup.** This brief is interesting reading on the intersection of state restoration damages remedy and CERCLA. <https://www.justice.gov/osg/brief/atlantic-richfield-co-v-christian-0>. This is John Sither's Clark Fork site negotiation case.
4. **Superfund Comfort/Status Letters; another recent guidance coming out the EPA Superfund Task Force work.** On August 21, EPA issued the attached 2019 Policy on the Issuance of Superfund Comfort/Status Letters. The transmittal package, containing the policy memorandum, model documents, and updated reference documents is available on the Agency's website at <https://www.epa.gov/enforcement/comfortstatus-letters-guidance>.

Enjoy the holiday weekend. Karen.

Message

From: Kelley, Rosemarie [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=23B7C900323047FCA012DF62C58C4D22-RKELLEY]
Sent: 8/30/2019 5:24:53 PM
To: Porter, Amy [Porter.Amy@epa.gov]
CC: karen.dworkin@usdoj.gov; Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: Re: SEP follow up

Will 1:30 work for a call?

Rosemarie

On Aug 30, 2019, at 1:13 PM, Porter, Amy <Porter.Amy@epa.gov> wrote:

Rosemarie should be returning shortly so we need to wait to hear from her.

From: Dworkin, Karen (ENRD) <Karen.Dworkin@usdoj.gov>
Sent: Friday, August 30, 2019 1:02 PM
To: Porter, Amy <Porter.Amy@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: SEP follow up

I know Caroline is out. What about Rosemarie? Also wanted to give you guys some information as well on some further

Ex. 5 Attorney Client (AC)

From: Porter, Amy <Porter.Amy@epa.gov>
Sent: Friday, August 30, 2019 12:59 PM
To: Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: SEP follow up

I'm free until 2.

From: Dworkin, Karen (ENRD) <Karen.Dworkin@usdoj.gov>
Sent: Friday, August 30, 2019 12:36 PM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Cc: Porter, Amy <Porter.Amy@epa.gov>
Subject: RE: SEP follow up

I'm back. Would 1:00 work for you guys? I don't think it will take long. We are working to incorporate all your comments in one fashion or another.

From: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Sent: Friday, August 30, 2019 10:20 AM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV>
Cc: Porter, Amy <Porter.Amy@epa.gov>
Subject: RE: SEP follow up

Karen –

Would 11 am work for a call with Amy and me?

Rosemarie

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Friday, August 30, 2019 10:03 AM
To: karen.dworkin@usdoj.gov
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>
Subject: Re: SEP follow up

Hi Karen,

Sorry I missed this yesterday. I'm out and on the move today, but Rosemarie is back — and able to loop back with Susan and Larry if needed. Also, Amy Porter was in the meeting with Susan and Larry, and she is in. John is out. If you have trouble connecting, just shoot me an email and I'll find a way to get back to you.

Have a great weekend!

Sent from my iPhone

On Aug 29, 2019, at 6:09 PM, Dworkin, Karen (ENRD) <Karen.Dworkin@usdoj.gov> wrote:

Thanks. do you have a minute to chat about these comments?

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Thursday, August 29, 2019 4:48 PM
To: Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>
Subject: RE: SEP follow up

Hi Karen,

Ex. 5 Attorney Client (AC) but we discussed with Susan and Larry and have some thoughts for tweaks.

Ex. 5 AC/DP

Ex. 5 AC/DP

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Dworkin, Karen (ENRD) <Karen.Dworkin@usdoj.gov>
Sent: Thursday, August 29, 2019 2:37 PM
To: Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Subject: SEP follow up

Hi. I see Rosemarie is out today. Forwarding this ~~for any info you have on the call yesterday, and any initial reactions to the below.~~ **Ex. 5 Attorney Client (AC)**

Ex. 5 Attorney Client (AC)

Karen.

From: Dworkin, Karen (ENRD)
Sent: Thursday, August 29, 2019 12:56 PM
To: 'Kelley, Rosemarie' <Kelley.Rosemarie@epa.gov>
Subject: time for a SEP follow up call today?

Would like to hear how Susan's call with Regions went, and what if anything Susan plans to raise with Jeff re SEPs in the call/meeting tomorrow. Subject to those unknowns, here's a straw proposal

Ex. 5 Attorney Client (AC)

Ex. 5 AC/DP

Ex. 5 AC/DP

Message

From: Kelley, Rosemarie [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=23B7C900323047FCA012DF62C58C4D22-RKELLEY]
Sent: 8/28/2019 2:28:52 PM
To: Hull, George [Hull.George@epa.gov]
Subject: RE: FYI TheHill.com: Trump admin erases key environmental enforcement tool

Great. thanks.

From: Hull, George <Hull.George@epa.gov>
Sent: Wednesday, August 28, 2019 10:13 AM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Cc: Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Egan, Patrick <egan.patrick@epa.gov>
Subject: RE: FYI TheHill.com: Trump admin erases key environmental enforcement tool

Rosemarie,

Ex. 5 Deliberative Process (DP)

From: Hull, George
Sent: Tuesday, August 27, 2019 4:55 PM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Cc: Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Egan, Patrick <egan.patrick@epa.gov>
Subject: RE: FYI TheHill.com: Trump admin erases key environmental enforcement tool

Ex. 5 Deliberative Process (DP)

From: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Sent: Tuesday, August 27, 2019 4:25 PM
To: Hull, George <Hull.George@epa.gov>
Cc: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: Fwd: FYI TheHill.com: Trump admin erases key environmental enforcement tool

George -

Ex. 5 Deliberative Process (DP)

Rosemarie

Begin forwarded message:

From: "Makepeace, Caroline" <Makepeace.Caroline@epa.gov>
Date: August 27, 2019 at 3:06:13 PM EDT
To: "Kelley, Rosemarie" <Kelley.Rosemarie@epa.gov>, "Porter, Amy" <Porter.Amy@epa.gov>, "Koslow, Karin" <Koslow.Karin@epa.gov>, "Fogarty, Johnpc" <Fogarty.Johnpc@epa.gov>
Cc: "Buterbaugh, Kristin" <Buterbaugh.Kristin@epa.gov>
Subject: FYI TheHill.com: Trump admin erases key environmental enforcement tool

From TheHill.com: <https://thehill.com/policy/energy-environment/458317-trump-admin-crases-key-environmental-enforcement-tool> Note that it says EPA did not “return a request for comment.”

The Department of Justice (DOJ) is doing away with an enforcement tool that has been used in the past to get states and localities into compliance with environmental laws.

Assistant Attorney General Jeffrey Bossert Clark announced Wednesday in an internal letter obtained by The Hill that the agency will no longer utilize Supplemental Environmental Projects (SEPs) in settlements with state and local government polluters.

The enforcement tool is often offered in settlements with industries and states that violate environmental laws such as the Clean Water Act and allows them the opportunity to pay lower fines by instituting actions such as environmental cleanups or infrastructure upgrades.

The DOJ letter addressed to environmental enforcement staff criticized the tool, used frequently under the Obama administration, as going “beyond what is required under federal, state, or local laws.”

“By definition, a SEP goes beyond what is required under federal, state, or local laws ... and thus exceeds what could be obtained through agency enforcement authority or by litigating a matter to judgment,” Clark wrote.

E&E News was the first to report on the letter.

Critics, including some congressional Republicans, have argued the SEP program chooses clean energy favorites by putting revenue into the pockets of unrelated industries.

For example, in the 2016 landmark Volkswagen emissions cheating case, the car company settled with the EPA for \$14.7 billion for its diesel vehicles violating Clean Air Act regulations. As part of that settlement, \$2.7 billion was paid toward a nitrogen oxide reduction program, giving states money toward a clean transportation program including electric vehicles.

House lawmakers in 2018 attempted to pass the “Stop Settlement Slush Funds Act,” which would have prohibited SEPs and other third-party payments from being paid under environmental settlements. The bill was never taken up in the Senate, but it was referenced in the DOJ memo.

In most instances where entities are charged with failing to comply with environmental standards, the dispute is resolved through a settlement or consent decree with the DOJ. Both typically include some sort of monetary penalty. Critics have also argued that SEPs limit the dollar amount owed to the Treasury Department through those settlements by redirecting dollars to other indirect areas.

“SEPs are debated devices that many members of Congress and academic commentators view as mechanisms for sidestepping the power of the purse,” the DOJ memo reads.

“SEPs involving state and local government defendants therefore unambiguously fall within the core of the Attorney General’s November 2018 Policy, and are precluded, absent the granting of an exception based on other considerations,” it continues.

The directive is the latest policy change to come from the Trump administration regarding polluter enforcement. EPA Administrator Andrew Wheeler as well as leadership at the EPA’s Office of Enforcement and Compliance Assurance (OCEA) have been vocal in their preference for pollution mitigation efforts over direct enforcement. That preference is reflected in the agency’s dwindling annual enforcement data. OCEA has also introduced in the past year a series of changes to its polluter self-audit program, including one developed specifically for the oil and gas industry.

The policy also appears to build off a 2018 memo by then-Attorney General Jeff Sessions, who said the settlements deprived localities of the ability to decide their own policy issues.

Eric Schaeffer, executive director of the Environmental Integrity Project and a former director of the EPA's Office of Civil Enforcement, said the directive is "consistent" with the Trump administration's environmental approach but argues it also has embraced the tool to some extent.

"They've argued its 'coercive,' and some of that comes from right-wing bloggers and groups like Competitive Enterprise Institute. That explains why they don't want to raise the concept with industry. On the other hand, they seem quite happy to give the industry credit for SEP's that don't really seem to pass muster under the existing policy or under the argument we heard from Republicans in the House that penalty dollars aren't supposed to be diverted to SEPs," Schaeffer told The Hill.

An employee within the EPA's enforcement office likened the SEP directive to a "chill" in the agency.

"Over many years there have been a lot of good projects in communities that benefit the environment beyond putting money in the Treasury. And right now there's a real chill," the source said.

The EPA did not return a request for comment on the SEP policy change

Appointment

From: Koslow, Karin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D00AA4F4FEAD4A3FA02F0CAFE57ED221-KOSLOW, KARIN]
Sent: 7/17/2019 6:35:38 PM
To: Koslow, Karin [Koslow.Karin@epa.gov]; Amy Porter (Porter.Amy@epa.gov) [Porter.Amy@epa.gov]; Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]; Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Buterbaugh, Kristin [Buterbaugh.Kristin@epa.gov]
Subject: Quick strategy discussion re: recommendation for next steps vis a vis DOJ Draft SEP memo
Location: Rosemarie's office
Start: 7/17/2019 8:00:00 PM
End: 7/17/2019 8:30:00 PM
Show Time As: Busy

Hoping we can get together this afternoon to talk about options we want to present to Susan and Larry tomorrow re: a response to the draft memo. We won't have a substantive focused discussion re: the content of the memo, but rather want to talk about process - in terms of the form and scope of our response.

If this time doesn't work, we could try for 9 a.m. tomorrow (Thursday).

Thanks,
Karin

Message

From: Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Sent: 9/10/2019 3:17:37 PM
To: Koslow, Karin [Koslow.Karin@epa.gov]
CC: Porter, Amy [Porter.Amy@epa.gov]; Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]
Subject: RE: Wheeler Fact Sheet on SEPs
Attachments: OECA SEPs in Muni Cases Fact Sheet.9.10.19.docx

attached

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Makepeace, Caroline
Sent: Tuesday, September 10, 2019 11:14 AM
To: Koslow, Karin <Koslow.Karin@epa.gov>
Cc: Porter, Amy <Porter.Amy@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>
Subject: Re: Wheeler Fact Sheet on SEPs

I was just doing that, multitasking during a call with DOJ legislative folks! I have to talk in a minute, but will get it to you shortly.

Sent from my iPhone

On Sep 10, 2019, at 11:12 AM, Koslow, Karin <Koslow.Karin@epa.gov> wrote:

All – just to close the loop – can you please finalize this and we'll get it to the IO ASAP.

Thanks!
Karin

Karin Koslow
Deputy Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Desk: (202) 564-0171
Cell: (202) 716-5645
WJC South Room 3142D

From: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Sent: Monday, September 09, 2019 6:51 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>;

Porter, Amy <Porter.Amy@epa.gov>
Cc: Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>
Subject: RE: Wheeler Fact Sheet on SEPs

Caroline –

Thanks for drafting this (and on short notice)! I really appreciate it.

Karin and I have reviewed and our comments are attached. Please let us know if any of the changes raise concerns. Thanks.

Rosemarie

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Monday, September 09, 2019 12:52 PM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>
Cc: Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>
Subject: Wheeler Fact Sheet on SEPs

Please see attached draft. John has already reviewed and made helpful comments (Thx!)

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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SUPPLEMENTAL ENVIRONMENTAL PROJECTS (SEPs) IN CASES INVOLVING STATE AND LOCAL GOVERNMENTS

BACKGROUND:

- Under EPA's long-standing **Supplemental Environmental Projects (SEP) Policy**¹, in determining the appropriate final penalty amount to accept in settlement, EPA may consider a project that a defendant voluntarily offers to undertake. The project must have a nexus to the environmental requirement that the defendant violated and must not be otherwise required by law.
- SEPs are projects that a defendant volunteers to undertake in settlement that provide additional environmental benefits by reducing human health exposures or environmental impacts or by reducing the likelihood of future violations.
- Examples of SEPs include lead-based paint abatement for low-income housing in the vicinity of a facility with Clean Air Act violations involving lead emissions; purchase of emergency response equipment for the community in which a defendant has violated the Clean Air Act risk management program; and emissions or discharge reductions at a defendant's facility beyond that which is required by law.

TALKING POINTS:

- EPA's SEP Policy is unchanged and still in effect, and the Agency continues to support the inclusion of SEPs that meet all the requirements of the Policy in appropriate cases.
- EPA continues to include SEPs in administrative settlements, including those with governmental entities.
- EPA supports SEPs not only because of their additional positive environmental benefits, but also because they are useful in achieving settlements.
- Many defendants prefer a lower civil penalty and the goodwill generated with the community through the performance of SEPs, even if their total expenditure is greater than it would have been had they only paid a civil penalty. State or local governments often request to include SEPs in settlement because local officials and the communities they represent consider the projects to be positive elements in the resolution of violations.
- In August 2019, DOJ's Enforcement and Natural Resources Division issued a memorandum expressly disallowing the inclusion of SEPs in cases against governmental entities, with extremely limited potential exceptions.
- The August 2019 memo relied on a memo issued by the Attorney General in November 2018, which directed that settlements with state and local governments could not include terms that go beyond what is necessary to ensure compliance. ENRD interprets that memo to preclude SEPs because they are voluntary and cannot be obtained "by litigating the matter to judgment."

¹ EPA's SEP Final Policy was issued over 20 years ago, in 1998, and was updated in 2015.

Message

From: Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Sent: 8/8/2019 5:34:20 PM
To: Koslow, Karin [Koslow.Karin@epa.gov]
CC: Porter, Amy [Porter.Amy@epa.gov]; Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]
Subject: Re: InsideEPA Response

Ex. 5 AC/DP

Sent from my iPhone

On Aug 8, 2019, at 1:26 PM, Koslow, Karin <Koslow.Karin@epa.gov> wrote:

Karin Koslow
Deputy Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Desk: (202) 564-0171
Cell: Ex. 6
WJC South Room 3142D

From: Hull, George <Hull.George@epa.gov>
Sent: Thursday, August 08, 2019 1:25 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Egan, Patrick <egan.patrick@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>
Cc: Koslow, Karin <Koslow.Karin@epa.gov>
Subject: RE: InsideEPA Response

Ex. 5 AC/DP

From: Hull, George

Sent: Thursday, August 08, 2019 12:53 PM

To: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Egan, Patrick <egan.patrick@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>

Cc: Koslow, Karin <Koslow.Karin@epa.gov>

Subject: RE: InsideEPA Response

Ex. 5 AC/DP

From: Bodine, Susan <bodine.susan@epa.gov>

Sent: Thursday, August 08, 2019 12:26 PM

To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Egan, Patrick <egan.patrick@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>

Cc: Hull, George <Hull.George@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>

Subject: RE: InsideEPA Response

OK

From: Starfield, Lawrence <Starfield.Lawrence@epa.gov>

Sent: Thursday, August 8, 2019 12:22 PM

To: Bodine, Susan <bodine.susan@epa.gov>; Egan, Patrick <egan.patrick@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>

Cc: Hull, George <Hull.George@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>

Subject: RE: InsideEPA Response

Susan,

Ex. 5 AC/DP

Ex. 5 AC/DP

Cc'ing Karin to see if OCE has any concerns with the wording.

Larry

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From: Bodine, Susan <bodine.susan@epa.gov>

Sent: Thursday, August 08, 2019 11:56 AM

To: Egan, Patrick <egan.patrick@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>

Cc: Hull, George <Hull.George@epa.gov>

Subject: RE: InsideEPA Response

My redraft. Any comments? Also needs coordination with DOJ.

Ex. 5 Deliberative Process (DP)

From: Egan, Patrick <egan.patrick@epa.gov>

Sent: Thursday, August 8, 2019 11:01 AM

To: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>

Cc: Hull, George <Hull.George@epa.gov>

Subject: InsideEPA Response

Susan, Larry and Patrick,

Here is a proposed response to InsideEPA's inquiry. Let me know if you have any comments.

Thanks,

Pat

Ex. 5 Deliberative Process (DP)

Patrick J. Egan, M.P.A.
Deputy Director of Communications
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW (MC: 2201A)
Washington, DC 20460
Office: 202-564-4059 | Cell: **Ex. 6**

Message

From: Porter, Amy [Porter.Amy@epa.gov]
Sent: 5/1/2019 2:45:43 PM
To: Koslow, Karin [Koslow.Karin@epa.gov]
Subject: RE: Recent DOJ memos relevant to SEPs/mitigation

Thanks. We are doing work on our intranet and internet pages right now where OECA docs are so we might want to think about what would go on a One Drive without duplicating efforts.

For now, our public page for policies is: <https://www.epa.gov/enforcement/enforcement-policy-guidance-publications>

From: Koslow, Karin
Sent: Wednesday, May 01, 2019 10:40 AM
To: Porter, Amy <Porter.Amy@epa.gov>
Subject: RE: Recent DOJ memos relevant to SEPs/mitigation

This is great – thank you! I was thinking about asking Catherine to start a hardcopy notebook for me with key memos. I can copy you on that email.

We could also create a One Drive with these memos.... I'm happy to set up the infrastructure for it. It would be super basic to start and then we could refine as more memos are added?

Let me know what you think – thanks,
Karin

Karin Koslow
Deputy Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-0171
WJC South Room 3142D

From: Porter, Amy
Sent: Wednesday, May 01, 2019 10:07 AM
To: Koslow, Karin <Koslow.Karin@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Subject: FW: Recent DOJ memos relevant to SEPs/mitigation

Karin –

As discussed. More to come during the XPS general meetings.

Amy

From: Makepeace, Caroline
Sent: Wednesday, May 01, 2019 10:04 AM

To: Porter, Amy <Porter.Amy@epa.gov>

Subject: Recent DOJ memos relevant to SEPs/mitigation

Attached are some recent DOJ memos and guidance relevant to our SEP and mitigation practice: AG memo re third party payments; ENRD guidance on that memo; State and local government (aka "Muni") memo.

Ex. 5 AC/DP

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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Message

From: Sheppard, Tracy [Sheppard.Tracy@epa.gov]
Sent: 7/25/2017 9:34:59 PM
To: Siciliano, CarolAnn [Siciliano.CarolAnn@epa.gov]; Koslow, Karin [Koslow.Karin@epa.gov]
Subject: RE: Cross-Cutting Issues News for June 26, 2017 -- SEPs and new Attorney General policy

Karin,

Apologies for my earlier message. I found this in my task list – Carol Ann asked me to do SEPs at 8/9's reg review and ORC/OGC call. I've started pulling materials together for the presentation and don't have a problem moving the reg review presentation up to 8/2.

Tracy L. Sheppard, Attorney-Advisor,
US EPA, Office of General Counsel
Sheppard.Tracy@epa.gov
(202) 564-1305 office
(202) 839-2038 mobile

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From: Siciliano, CarolAnn
Sent: Friday, June 30, 2017 10:50 PM
To: Sheppard, Tracy <Sheppard.Tracy@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>
Subject: RE: Cross-Cutting Issues News for June 26, 2017 -- SEPs and new Attorney General policy

Ok, Tracy. Maybe August 9 instead for the ORC/OGC meeting & Reg Review?

Carol Ann Siciliano
Associate General Counsel
Cross-Cutting Issues Law Office
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-5489
siciliano.carolann@epa.gov

From: Sheppard, Tracy
Sent: Friday, June 30, 2017 12:06 PM
To: Koslow, Karin <Koslow.Karin@epa.gov>; Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov>
Subject: RE: Cross-Cutting Issues News for June 26, 2017 -- SEPs and new Attorney General policy

I'll work on preparing something for an upcoming reg review. I won't be available to present at the 7/12 meeting. I'll be in MS for the DWH Gulf Coordination meeting from 7/10 to 7/12.

Tracy L. Sheppard, Attorney-Advisor,
US EPA, Office of General Counsel
Sheppard.Tracy@epa.gov
(202) 564-1305 office
(202) 839-2038 mobile

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From: Koslow, Karin
Sent: Friday, June 30, 2017 12:02 PM
To: Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov>; Sheppard, Tracy <Sheppard.Tracy@epa.gov>
Subject: RE: Cross-Cutting Issues News for June 26, 2017 -- SEPs and new Attorney General policy

Will do!

Karin Koslow
Deputy Associate General Counsel
Cross-Cutting Issues Law Office
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-0171
WJC North Room 7358

From: Siciliano, CarolAnn
Sent: Thursday, June 29, 2017 7:36 PM
To: Koslow, Karin <Koslow.Karin@epa.gov>; Sheppard, Tracy <Sheppard.Tracy@epa.gov>
Subject: FW: Cross-Cutting Issues News for June 26, 2017 -- SEPs and new Attorney General policy

This is a very interesting article. **Tracy**, could you prepare a five-minute update for Reg Review (any time in the next few

Ex. 5 AC/DP

No rush. But this is interesting. And perhaps we could share our learnings with the Regional Counsels at the next Monthly Call – Wednesday July 12 at 4 pm, room 4045. You could be our guest speaker. **Karin**, could you keep track of this and add this topic to the 7/12 ORC/OGC agenda if Tracy is ready?

Backing EPA's SEP Policy, DOJ Seeks To Ease Fears Over Settlement Bar

The Justice Department (DOJ) is seeking to ease fears that Attorney General Jeff Sessions' recent memo barring third-parties from receiving monetary payments in legal settlements will undercut EPA's popular supplemental environmental projects (SEPs), saying that projects that comply with EPA policy, which already prohibits third-party payments, will not be affected by Sessions' memo.

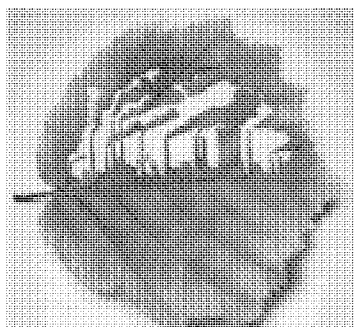
Carol Ann Siciliano
Associate General Counsel
Cross-Cutting Issues Law Office
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-5489
siciliano.carolann@epa.gov

From: OGCLibrary

Sent: Monday, June 26, 2017 11:56 AM

To: Allnutt, David <Allnutt.David@epa.gov>; Bigioni, Neil <bigioni.neil@epa.gov>; Cozad, David <Cozad.David@epa.gov>; Dierker, Carl <Dierker.Carl@epa.gov>; Dolph, Becky <Dolph.Becky@epa.gov>; Engelman, Alexa <ENGELMAN.ALEXA@EPA.GOV>; Frey, Bert <frey.bertram@epa.gov>; Harrison, Ben <Harrison.Ben@epa.gov>; Kaplan, Robert <kaplan.robert@epa.gov>; Kelly, Lynn <Kelly.Lynn@epa.gov>; Mackey, Cyndy <Mackey.Cyndy@epa.gov>; Matthews, Julie <Matthews.Juliane@epa.gov>; Nguyen, Quoc <Nguyen.Quoc@epa.gov>; Schaaf, Eric <Schaaf.Eric@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>; Stern, Allyn <Stern.Allyn@epa.gov>; Walker, Mike <Walker.Mike@epa.gov>; Ward, W. Robert <Ward.Robert@epa.gov>; Williamson, Timothy <Williamson.Tim@epa.gov>; OGC CCILO <OGC_CCILO@epa.gov>; Vergeront, Julie <Vergeront.Julie@epa.gov>; Kaminer, Joan <Kaminer.Joan@epa.gov>; OGC FEAT <OGC_FEAT@epa.gov>; Harwood, Jackie <Harwood.Jackie@epa.gov>; Rongone, Marie <Rongone.Marie@epa.gov>; Hanselman, Erik <Hanselman.Erik@epa.gov>

Subject: Cross-Cutting Issues News for June 26, 2017



Cross-Cutting Issues News for June 26, 2017

Bloomberg Daily Environment Report™ BNA

Leading the News

Courts

Property Rights Curbed by Top U.S. Court in Development Case

The U.S. Supreme Court dealt a blow to property-rights advocates June 23, ruling that regulators didn't violate the U.S. Constitution when they refused to allow separate houses on adjoining riverfront lots owned by four siblings.

General Policy

Week Ahead: Alaska Senator Has Dual Clout on Environment, Energy

Sen. Lisa Murkowski (R-Alaska), who chairs the Energy and Natural Resources Committee, also has clout on environmental matters—and she'll make her influence felt at a Tuesday hearing that's one of numerous events in those areas during the week of June 26.

News

Endangered Species

German Bill May Ease Construction on Land With Protected Species

The lower house of the German Parliament, the Bundestag, passed a bill late June 22 amending the country's Federal Act for the Protection of Nature, making it easier for construction projects to move forward even if they threaten protected species.

Forests

Norway Slashes Contribution to Anti-Deforestation Amazon Fund

Norway, which has donated more than \$1 billion in the past decade to the Amazon Fund to fight

deforestation, will significantly scale back its contribution this year, arguing that Brazil's commitment to environmental protection "might be in retreat."

White House

Tech in One Hand, Overhaul in Other, Trump Tackles Government

President Donald Trump's plans to use new technology to modernize the federal government—claiming \$1 trillion in savings and better services—may outstrip his proposal to overhaul agencies to make them more effective.

Hill Watch

Hill Watch: Climate Regulation

The following chart summarizes the status of key environmental policy legislation pending in Congress. The first column provides a synopsis of the purpose, content, and support for the legislation. The second column summarizes the provisions of the legislation. The third column outlines the procedural path ahead and the political prospects for enactment of the bills.

Hill Watch: Coal Mining

Hill Watch: Science Policy

Regulatory Agenda

TODAY'S FEDERAL REGISTER

NOTICE. Daily Environment Report's Regulatory Agenda, Comment Deadlines, and Federal Register summaries are now published as part of EHS Federal Regulatory Alert™ <http://news.bna.com/frmn/>.

TODAY'S STATE REGISTERS

NOTICE. State Register summaries are published as part of EHS State Regulatory Alert™ <http://news.bna.com/srmn/>.

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TRUMP'S EPA: Agency at a crossroads – Complete coverage

Latest News

Backing EPA's SEP Policy, DOJ Seeks To Ease Fears Over Settlement Bar

The Justice Department (DOJ) is seeking to ease fears that Attorney General Jeff Sessions' recent memo barring third-parties from receiving monetary payments in legal settlements will undercut EPA's popular supplemental environmental projects (SEPs), saying that projects that comply with EPA policy, which already prohibits third-party payments, will not be affected by Sessions' memo.

Daily Feed

D.C. Circuit sets argument in Trump '2-1' order lawsuit

Judge Randolph Moss schedules Aug. 10 arguments in litigation over President Trump's order that requires EPA to repeal two rules for every new measure issued.

CARBON CAPTURE

Post-Kemper question: Is 'clean coal' dead?

Christa Marshall, E&E News reporter

Published: Friday, June 23, 2017



An aerial view of Mississippi Power's Kemper County Energy Facility. Mississippi Power

The possible end of Southern Co.'s flagship "clean coal" project in Mississippi isn't the death knell for carbon capture and sequestration technology, industry analysts say.

Instead, the problems at the Kemper County Energy Facility — which state regulators want to turn into a natural gas plant after years of delays and cost overruns — resulted from a unique series of events and a coal gasification system that was scaled up too fast.

The plant's equipment to capture and store carbon dioxide didn't cause its current challenges and is still an option for coal and other fossil fuels, said Erin Burns, a policy adviser in the clean energy program at Third Way, a centrist Democratic think tank.

"This is absolutely not the death of CCS," she said.

A string of CCS successes this year, including the launch of the world's largest retrofit of a coal plant with carbon capture technology, make it clear the technology works, she said. Other large projects have opened in the Middle East and Illinois this year to trap CO₂ from steel and ethanol manufacturing.

Still, both critics and boosters of making coal cleaner in a world worried about climate change have been looking to Kemper as a model for future development. For many, Kemper was at least part of the future of coal.

That's why so many observers were shocked when on Wednesday the Mississippi Public Service Commission asked Southern Co. subsidiary Mississippi Power to find a settlement within 45 days that would abandon the Kemper plant's coal and CCS operations ([Energywire](#), June 22).

The PSC said it was seeking a solution that would "eliminate ratepayer risk for unproven technology." Under the framework, Kemper would operate solely on natural gas, a fuel that has already been running the plant for years.

In a statement, Mississippi Power emphasized that no final decisions have been made, and that discussions with the PSC are ongoing.

"The PSC provided several guidelines to consider for the negotiations, including the possibility of the project only operating as a natural gas-fueled combined cycle plant. We look forward to reviewing the order," the company said.

Kemper, with a price tag now around \$7.5 billion, has been under construction since 2010. Developers envision gasifying lignite coal into synthetic gas and capturing 65 percent of the resulting CO2 emissions.

Unique case

If fully operational, it would be the second U.S. coal plant to capture the majority of its carbon emissions, after NRG Energy Inc.'s Petra Nova project in Texas, which launched this year.

Most of the recent setbacks for Kemper centered around its two gasifiers, which turn lignite coal from a mine near the plant into synthetic gas.

In January 2016, for instance, Mississippi Power said one of the gasifiers got hotter than anticipated during testing, causing cracks in the lining. The plant has operated approximately 200 days on lignite, said the company.

What's significant is that the gasifiers are separate from the carbon capture or "clean coal" portion of the plant, said John Thompson, director of the fossil transition project at the Clean Air Task Force.

The capture unit involves an antifreeze-like solvent called Selexol to strip CO2 that has been in use in other facilities since the 1960s.

"The capture equipment was actually the most mature part of this plant," Thompson said.

The same cost overruns and delays would have occurred even if Kemper had never tried to use CCS, he said, noting that coal gasification in general has been done successfully elsewhere with different technology.

In Mississippi, Southern was trying out its new transport integrated gasification (TRIG) technology, designed to be a model for gasifying "low-rank" lignite coals, which are common in countries like India.

Southern's experience differed from others in the sense TRIG was not tested extensively at commercial scale before being tried at a power plant. The gasifier was used at a testing center, but at a size about one-hundredth that of Kemper.

"They went from the pilot plant level to, like, 600 megawatts. People at the time thought they were way too ambitious. And it's been proven out," said Massachusetts Institute of Technology carbon capture expert Howard Herzog.

Coal's woes

Kemper also ran into other issues not related to CCS, such as labor challenges and expiring Department of Energy grants. It didn't help that a consistent drop in natural gas prices after the plant's groundbreaking seven years ago made the idea of turning coal into gas less of a viable concept.

Kemper's fate also may have been sealed before it ever broke ground. In an interview last year, Southern CEO Tom Fanning said the one thing he would change about the project was committing to a fixed price for customers with only 10 percent of the plant's engineering work completed.

"If we had taken more time to do more engineering ... we would have circumvented a lot of the problems that we incurred," Fanning said.

Critics of CCS have long said that Kemper was a huge waste of funds that could have been directed to other clean-energy solutions.

In a report last year, Friends of the Earth and Taxpayers for Common Sense said Kemper is "a stark reminder of why carbon capture and sequestration is a waste of our tax dollars and a false solution to the climate crisis."

Whether the plant's woes will hurt support for CCS policy is an open question. Thompson and other CCS supporters say advancing carbon capture and putting new incentives in place for it is critical for climate change because of the world's ongoing reliance on coal.

Supporters on Capitol Hill are pushing for an expansion of existing tax credits to provide more certainty to developers, among other incentives (*E&E Daily*, Dec. 6, 2016).

Problems for Southern

Kemper was a potential model in places like China, which has a lot of facilities that are gasifying coal to make chemicals and venting the CO₂ into air, said Thompson.

But Petra Nova, which began operations on budget and on time, is perhaps the more relevant model for CCS because of its status as a retrofit, according to many analysts. That is especially relevant in the U.S., which is not building new coal plants, much less coal gasification plants.

While gasification has worked elsewhere, it has "totally soured" as a concept for the power sector, according to Herzog. You don't need to gasify to do CCS, he said.

"Look at Petra Nova," he said. In addition to not gasifying coal, Petra Nova completed 90 percent of its conceptual design before it began construction.

Regardless of what Kemper may mean for CCS in general, it does mean a lot for Southern, which could be left with a CO₂ pipeline, coal mine and gasifier system to nowhere in a natural-gas-only scenario.

Issues that have to be addressed include an existing contract with Denbury Resources Inc. to use Kemper's CO₂ in enhanced oil recovery.

The utility signed several memorandums of understanding in recent years to explore the use of its TRIG technology at overseas projects. In December 2015, for instance, Southern penned a letter of intent with a South Korean company to evaluate the deployment of TRIG at a new 1,000-MW power plant.

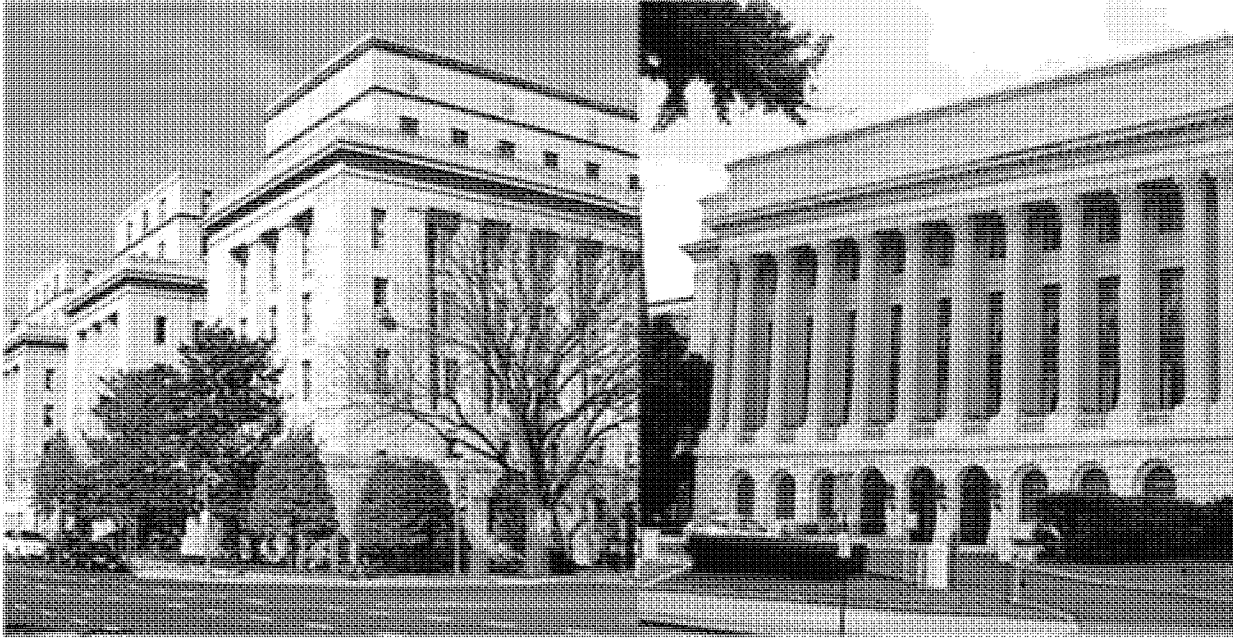
One thing that might not be an option if the plant becomes gas-only is use of the existing carbon capture infrastructure. Selexol typically is used when the CO₂ concentration in flue gas is high, which is much more suited to coal than natural gas, according to Thompson.

He called for an investigation into all the factors that led to this point. "There really needs to be an analysis of what went wrong," Thompson said.

PUBLIC LANDS

Trump homes in on 4 conservation picks

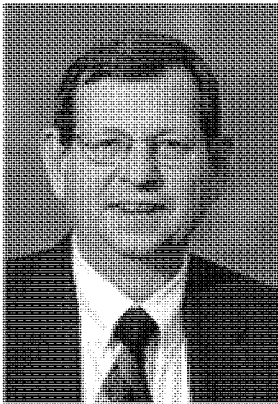
Corbin Hiar, E&E News reporter



The Trump administration is close to naming picks for four public land management positions at the Interior and Agriculture departments, sources say. Department of Interior; Wally Gobetz/Flickr

The Trump administration may be close to naming four key public land management positions, according to sources in the recreation and ranching communities.

Larry Voyles, who has led Arizona's Game and Fish Department since 2008, is believed to be in the running for Interior's assistant secretary for fish, wildlife and parks. He is set to retire from the state game office on July 26.



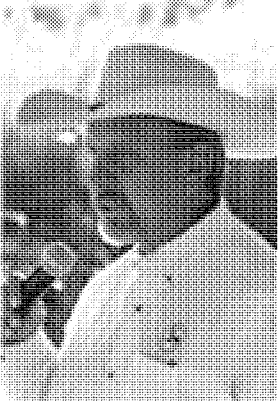
Larry Voyles. Arizona Game and Fish Department

That Interior position, which oversees the Fish and Wildlife Service and National Park Service and requires Senate confirmation, is currently held on an acting basis by Aurelia Skipwith. A former manager at the agriculture giant Monsanto Co. who would serve as his deputy, Skipwith was hired by Interior Secretary Ryan Zinke earlier this year ([Greenwire](#), April 6).

Voyles is a strong advocate of state wildlife management and clashed with the Obama administration's FWS over its recovery plan for the Mexican gray wolf.

Voyles is "a guy that understands the West and collaboration with state agencies," said one sportsmen's group executive. "He's someone that's highly approachable and someone that you can work with."

But another source expressed skepticism about Voyles' chances to land the high-ranking post. He has little direct experience managing parks and is believed to have been passed over for the FWS director position.



Scott Talbott. Talbott/LinkedIn

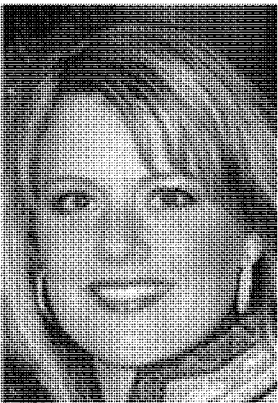
That job, several sources said, is likely to go to Scott Talbott. He is the director of Wyoming's Game and Fish Department and has a strong background in law enforcement.

Talbott grew up on a sheep ranch outside of Laramie, Wyo., according to his [official biography](#). One of his first jobs was as a lumberjack. He has worked for the state game office since 1985 and led it since 2011.

"We know Scott to be a fair-minded state agency director," said the source. "He's been in a position to help look at ways to balance energy extraction in a manner that has the least amount of impact on public lands and fish and wildlife habitat."

Earlier this month, Zinke hired Greg Sheehan, the former head of Utah's Division of Wildlife Resources, to serve at FWS in a newly created deputy director position. The move was seen by some sources as an effort to install political leadership at the service while the White House and the Senate vet the secretary's director pick ([E&E News PM](#), June 5).

A couple of sources said they expect Talbott and other likely Interior nominations to be announced after the Senate confirms David Bernhardt, Zinke's pick for deputy secretary ([Greenwire](#), June 16).



Erica Rhoad. Rhoad/LinkedIn

Another long-rumored conservation pick is Erica Rhoad, the staff director of the House Natural Resources Subcommittee on Federal Lands. She is widely believed to be a front-runner for the Agriculture Department's undersecretary for natural resources and the environment, a Senate-confirmed job that would entail overseeing the Forest Service.

Rhoad came to the subcommittee after lobbying for the National Rifle Association and the Society of American Foresters ([Greenwire](#), Jan. 27, 2016).

"I don't quite understand what the hangups are" to Rhoad's expected nomination, another sportsmen's group official said. "We know Erica. We can work with Erica. She'd be fine."

The undersecretary post Rhoad is in line for is currently held by Dan Jiron, a career official ([E&E Daily](#), June 19).

Sources also mentioned Rick Cables, the vice president of natural resources and conservation for Vail Resorts, as a possible pick for Forest Service chief.



Rick Cables. Cables/LinkedIn

Cables spent 35 years at the Forest Service, rising to the rank of regional forester, a title he held in both the Alaska and Rocky Mountain regions. He left the service six years ago to join the Colorado state government, where he oversaw the merger of the state's parks and wildlife division.

Since 2013, he has worked for Vail, which has a long-term lease with the Forest Service.

"He was campaigning for it early on," the official said of Cable's chief bid. "He came back here right after the election and did the rounds and threw his hat in the ring."

Cables could be hired immediately to replace Tom Tidwell, who served as chief for nearly the entirety of the Obama administration.

But the fact that he hasn't gotten the nod has led some sources to speculate that Agriculture Secretary Sonny Perdue may be content to leave Tidwell in place as he focuses on filling more than a dozen other key posts at the department (*E&E Daily*, June 14).

Alternatively, one ranching group official suggested that Perdue may be waiting to put Rhoad in place before the chief, who would report to her.

Spokesmen for USDA and all of the rumored administration picks didn't respond to requests for comment.

Interior press secretary Heather Swift said, "We do not have any personnel announcements at this time."

Reporter Marc Heller contributed.

PROPERTY RIGHTS

High court rejects takings claim in waterfront case

Jeremy P. Jacobs and Amanda Reilly, E&E News reporters



Donna Murr and her siblings said the government illegally took their private property along Wisconsin's St. Croix River. The Supreme Court today ruled against them. Pacific Legal Foundation

The Supreme Court today ruled against a Wisconsin family who claimed the state had unfairly taken their property without just compensation when it denied their bid to sell part of their riverfront property.

Though the case hinged on an esoteric legal principle, it has been closely watched by property rights activists and real estate developers because the Supreme Court has not provided much guidance on the "parcel as a whole" concept in its jurisprudence. Nine states led by Nevada, as well as the U.S. Chamber of Commerce and other groups, supported the family in the lawsuit.

Murr v. Wisconsin concerned a set of siblings who wanted to put one of two adjacent lots on the St. Croix River that they had inherited from their parents on the market.

A 1975 change in land-use ordinances, however, said the two lots had become a single parcel due to various factors, including their physical characteristics and common ownership by the Murrs.

The state denied the siblings' request to sell the vacant lot in Troy, Wis., and the Murrs sued, contending that the ordinance amounted to an unconstitutional taking without just compensation because it limited their options for the property. Namely, they could not sell it alone.

Today, the court ruled 5-3 that the Wisconsin land-use ordinance was reasonable, and upheld the state court's ruling against the Murrs. Justice Neil Gorsuch did not participate in the ruling; the case was argued before he was confirmed to the court.

Justice Anthony Kennedy, writing for the majority, said several factors contributed to the conclusion that the ordinance did not constitute a taking.

First, he said courts should give significant weight to a state's ability to set land-use ordinances.

Second, he agreed with Wisconsin that the court should consider the physical characteristics of the property. Though each of the Murrs' lots is over 1 acre — a key factor in the land ordinance — they both feature a steep bluff cutting through the center. Consequently, there is less than 1 acre of suitable space to be developed in both lots combined.

"[T]he physical characteristics of the property support its treatment as a united parcel," Kennedy wrote, adding that it was "reasonable to expect their range of potential uses might be limited."

Perhaps most importantly, Kennedy pointed directly to the appraisal of the lot provided by the Murrs. The appraisal valued the lot they wanted to sell at \$40,000 if it were left undeveloped. The value of the two lots together was pegged at \$698,300 — so the vacant lot represented less than 10 percent.

"[T]he government action was a reasonable land-use regulation, enacted as part of a coordinated federal, state, and local effort to preserve the river and the surrounding land," Kennedy wrote.

Kennedy was joined in the majority by the court's liberal wing: Justices Elena Kagan, Sonia Sotomayor, Stephen Breyer and Ruth Bader Ginsburg.

The typically more conservative justices dissented.

Chief Justice John Roberts wrote that Kennedy's "bottom-line conclusion does not trouble me." But he quibbled with the factors on which Kennedy relied, including the physical characteristics.

The Murrs were represented by the conservative, California-based Pacific Legal Foundation.

"My brothers and sister and I are certainly disappointed in today's ruling," Donna Murr said in a statement.

John Groen, PLF's general counsel, argued that the decision was "unfortunate" both for the Murrs and "all property owners."

[Click here](#) for the opinion.

Q&A

Ex-DOE scientist on starting activist group, opposing Trump

[Hannah Hess](#), E&E News reporter

Published: Friday, June 23, 2017



Jane Zelikova is an ecologist who founded 500 Women Scientists after President Trump's election. 500 Women Scientists

Jane Zelikova helped launch a grass-roots science advocacy group in the wake of President Trump's election last fall that has attracted more than 20,000 women.

It began with a pledge published immediately following the 2016 election by Zelikova and three women she had met in graduate school at the University of Colorado, Boulder. She said they felt compelled to speak up for science and marginalized groups, including immigrants and people with disabilities.

When the letter went live, Zelikova was a Washington-based scientist working on carbon capture and storage in the Energy Department's Office of Fossil Energy.

E&E SERIES



Energy and environmental newsmakers dish on politics, pet peeves and their TV addictions. [Click here](#) to read more stories in this series.

The letter drew signatures from around the globe, representing women in disciplines ranging from accelerator physics to zoology. And the group, 500 Women Scientists, took off as the founders promoted the cause. Zelikova co-wrote a February op-ed, for instance, calling on U.S. EPA Administrator Scott Pruitt to reconsider his stance on climate science.

Zelikova then decided to head West and would eventually walk away from her two-year American Association for the Advancement of Science fellowship.

"Meet Jane, a climate scientist who fled Trump's government," was the headline on a profile of Zelikova published by the nonprofit news organization *High Country News*, which detailed the Ukrainian immigrant's decision to quit.

Zelikova talked to E&E News last week on her final day at DOE about the rewards and challenges of working in the federal government, the frenetic pace of her days and what makes it worthwhile.

Tell me about how 500 Women Scientists was launched.

It started as a text message string between four friends who met in Colorado in grad school. We all sort of spread out all over the world after graduating, but we stayed in touch, and we text messaged each other almost every day — updates of what we were up to, pictures of our kids and our dogs. And then as the election neared, those text messages became more political. Because I was in D.C., people were asking me to sort of update them on what was happening.

The night of the election, the text messages took a more concerned tone. For a couple of days, we were just mostly texting about being worried. At some point, we decided that we were going to write an open letter expressing all of the concerns that we had been expressing to each other. We published it in *Scientific American*, hoping that we could get 500 signatures from other women scientists that agreed with us and felt like the message resonated with them. Within just a matter of hours, we had reached our 500-signature goal, and it kept growing. Within another week, we had thousands of signatures. So the letter sort of became the banner under which we organized and created a grass-roots organization for women scientists to come together to speak up for the things that matter to us, like science and empowering women and pushing for diversity and inclusivity in science.

What was your career path in the federal government? And how did you arrive at the decision to quit?

After earning a Ph.D. in ecology, I was hired as a postdoc at the U.S. Geological Survey in Utah, and I started working on a climate change experiment. I then received a two-year Mendenhall Research Fellowship, working on topics related to climate change, carbon and livestock grazing across the U.S. Then I moved to the University of Wyoming for another postdoc to look at different climate change experiments and mostly focus on the impacts to plants and soil. About eight years after I graduated with my Ph.D., I started as an AAAS Science and Technology Policy fellow at DOE on leave from my position as a research scientist.

I hadn't ever really worked on energy before. Carbon capture and storage involves very interdisciplinary science that brings together innovation, technology and geology with subsurface science and basic biology. It was definitely a new

learning topic for me. I also started learning more about how the federal government works in D.C. There were a lot of meetings, and I got to meet a lot of great people. We work a lot with [nongovernmental organizations] and with Hill staffers to sort of explain the technology, answer questions and sort of link the work that we do with the benefits of the technology and the science behind it. It got at all the different parts that are interesting to me: the science, the technology and how it can really help people.

What does life look like post-DOE?

I spend my days thinking about, researching and talking about climate change. I usually need to take a break in the middle of the day and go for a bike ride or a hike or a run, because the topic is pretty difficult to get through a solid eight hours of. So I try to get outside as much as I can — usually every day. Because now I live in Colorado, that's a really easy and accessible thing for me. I spend a lot of my evenings working on 500 Women Scientists, and weekends are sort of split between getting outside and climbing or biking and working on 500 Women Scientists stuff.

It really does feel like running a startup, while having a full-time job. It sucks up a lot of my time that isn't my full-time job time as a researcher scientist. I work very hard to squeeze in time to get outside or see my friends or do the other things that I'm supposed to do as a normal, well-rounded human. The last six months have definitely felt like a startup schedule, which, you know, we did not sign up for and we did not expect, but that is what happened. It is a blessing because it resonates with people and it helps people all over the world. That part is really incredible. I would have never expected that, and it was not what we were trying for, but it's what happened. That's kind of undeniably powerful.

Do you define this as activism or advocacy?

It really feels more like activism. Although I feel like we advocate for things that should be self-explanatory: equality for women, a rightful place for science and innovation in our society, diversity in general. Those things are worth advocating for, and we do. I think, at least initially, a lot of what we were doing felt to me like activism because I was devoting so much of my time. I was rallying around points that were important to me, both as a scientist and as a woman, but also as an immigrant and a person who has close friends who are immigrants and refugees and close friends who are LGBT — people that felt threatened by both the rhetoric during the election and the outcome of the election.

That sounds like a full schedule. Is it ever too much?

A lot of times it feels very overwhelming. Then we will get an email or a message from someone. A lot of times it is from dads who are like, "Thank you so much for doing this; you guys are role models to my daughters." Or we'll get messages from women scientists who thank us for starting something they've been thinking about or that's so needed. That makes it meaningful in the times that it's really challenging. It's just a reminder that it matters to more than just us. It's kind of an incredible thrill and privilege to start something from nothing and to see it take off and to see people sort of relate to and value it.

Do you have advice to a woman who wants to get involved?

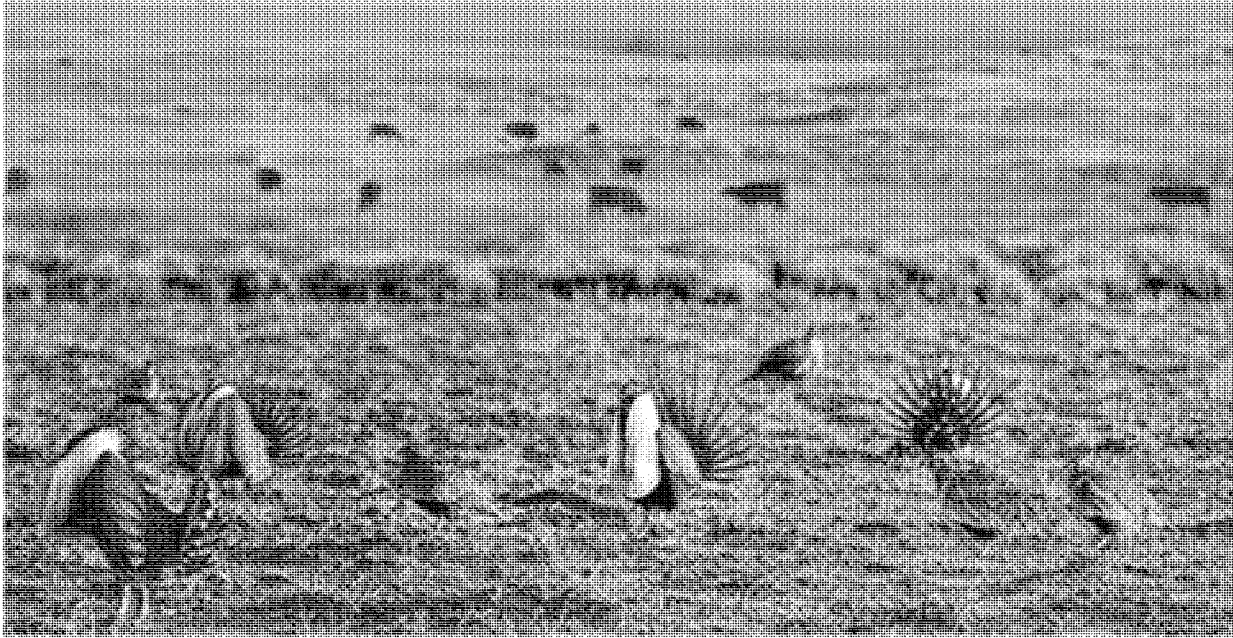
Go to 500womenscientists.org and click on the "Pods" button. Pods are sort of our local chapters. Find a pod in your area. I'm sure that there is one, because we have over 150 pods all over the U.S., but if there isn't one, then you can start a pod, and we make that very easy, too. Then you can be sort of the catalyst to bring together other women scientists in your area to have a community and a network and to think about and act for your community.

This interview has been edited and condensed.

SAGE GROUSE

Ad to Zinke: 'Stand with the West, not Washington'

Jennifer Yachnin, E&E News reporter



Environmentalists launched a new ad campaign urging Interior Secretary Ryan Zinke to leave sage grouse conservation plans alone.
U.S. Department of Agriculture/Flickr

The Western Values Project today launched a six-figure ad campaign urging Interior Secretary Ryan Zinke to refrain from altering federal sage grouse conservation plans.

The Montana-based government watchdog group's new campaign will also call on Western state governors to "hold Secretary Zinke and Washington bureaucrats accountable" for attempting to roll back any of the conservation efforts finalized in 2015.

Advertisements will air on television and digital markets, as well as in print, in Colorado, Montana, Nevada and Wyoming. The spots are timed to coincide with the Western Governors' Association's annual meeting next week, which will be held in Montana and features Zinke as a keynote speaker.

"Secretary Zinke's Secretarial Order undermines years of bipartisan collaboration to conserve the greater sage-grouse," Western Values Project Executive Director Chris Saeger said in a statement. "It appears Secretary Zinke wants to scrap all the work done by Western communities, coalitions, sportsmen and women, wildlife managers, private landowners, and industry groups."

He added: "If the Governors have an audience with Secretary Zinke next week, they must use it to insist that Interior continue with the sage-grouse plans. We simply cannot afford to turn back the clock on sage-grouse conservation."

Zinke announced earlier this month that the Trump administration would review federal greater sage grouse conservation plans to determine if they are hindering energy production on public lands ([Greenwire](#), June 7).

A review panel is set to assess both federal and state-level efforts to protect the birds and possibly recommend significant changes to how they are managed.

The Interior and Agriculture departments finalized their greater sage grouse plans in 2015 — covering grouse habitat across 70 million acres in 10 Western states — including amendments and revisions to 98 Bureau of Land Management and Forest Service land-use plans.

Western state governors involved in the development of conservation efforts requested to meet with Zinke at next week's WGA meeting to discuss the review. The Interior Department has not said whether Zinke will meet with the officials ([E&E News PM](#), June 21).

The new campaign includes a 30-second ad that touts bipartisan efforts among Western governors to create the 2015 conservation plans, which avoided a decision by the Fish and Wildlife Service to list the sage grouse under the Endangered Species Act.

"Sage grouse are a success story, proof conservation strategies can be effective," a male narrator states in the spot as images of the mottled-brown bird appear on screen.

The ad continues: "Epic collaboration among Western governors protecting habitat, property rights and energy development. But now, Washington wants to tell the West what to do, and Secretary Zinke is putting the interests of federal lobbyists ahead of families and public lands. The West is winning, keeping sage grouse off the endangered species list. Tell Secretary Zinke, stand with the West, not Washington."

LOBBYING

Former GOP aides sign on to advocate for conservation group

Kevin Bogardus, E&E News reporter



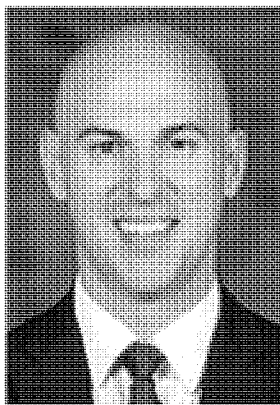
Published: Friday, June 23, 2017

Tony Essalih. [Essalih/LinkedIn](#)

The Nature Conservancy has hired former House aides to Texas Republicans to lobby on its behalf.

The environmental organization has brought on Cornerstone Government Affairs to lobby on funding for "conservation programs," "consideration of nature-based solutions in water resource projects" and "practical solutions to create a prosperous energy future," according to lobbying disclosure records released by the Senate this week.

Tony Essalih, former chief of staff to Rep. John Culberson (R-Texas); Tyler Nelson, once chief of staff to Rep. Pete Olson (R-Texas); and Justin Jordan, a former Texas political consultant, are Cornerstone's lobbyists working on behalf of the conservation group.



Tyler Nelson. [Nelson/LinkedIn](#)

The Nature Conservancy has spent \$230,000 on lobbying so far this year.

The group also has other lobby firms on its payroll, with staff members including ex-Republican aides, such as American Capitol Group's Tim Stewart — a former top staffer to the late Sen. Bob Bennett (R-Utah) — and BlueWater Strategies' McKie Campbell, former staff director of the Senate Energy and Natural Resources Committee for Sen. Lisa Murkowski (R-Alaska).

The Nature Conservancy is one of the few environmental groups to have met with U.S. EPA Administrator Scott Pruitt during the Trump administration's first weeks in office ([Greenwire](#), June 15).

PUBLIC LANDS

BLM advances lease sale near Dinosaur monument

[Jennifer Yachnin](#), E&E News reporter

Published: Friday, June 23, 2017



The Bureau of Land Management moved forward with plans to lease land near Dinosaur National Monument for oil and gas development. Mark Byzewski/Flickr

The Bureau of Land Management yesterday advanced plans to lease land near Dinosaur National Monument in northeast Utah despite National Park Service objections that development could negatively affect the 200,000-acre site.

According to a statement from BLM's Vernal and Price field offices, the agency is considering 64 parcels for inclusion in a December lease sale that includes nearly 67,000 acres.

The sites include parcels bordering Dinosaur and, according to NPS, would be visible from the visitor center and entrance road, as well as from other points within the monument.

"As we work in support of American energy independence, the BLM in Utah will move forward in a way that is consistent with national energy development policies," said BLM Utah spokeswoman Lisa Bryant.

"We will, of course, continue to carefully consider all nominated parcels to determine if they are appropriate for leasing and continue to conduct an environmental review before offering any leases for potential oil and gas development," Bryant said.

Conservationists have opposed the potential lease sale, arguing that energy extraction would affect the monument's dark night skies, as well as soundscapes and air quality.

"It is disappointing that BLM decided to ignore the concerns of the National Park Service at Dinosaur National Monument and include leases directly on the park border in their preferred alternative," said Nicholas Lund, senior manager of conservation programs for the National Parks Conservation Association.

"The environmental quality and visitor experience of visiting Dinosaur National Monument will be harmed if these parcels are developed," Lund said.

BLM will collect public comment on its environmental assessment through July 24. The agency is set to publish a notice of parcels included in the sale in September.

"We are currently in the leasing stage and are seeking public input to determine if these leases will be offered or not, and to determine if the stipulations are sufficient to protect the resources," said BLM Green River District Manager Gary Torres in a statement.

Conservationists had similarly objected to the sale of industry-nominated parcels near Zion National Park in southwest Utah from a scheduled September lease sale.

BLM pulled those parcels earlier this month, and the agency has yet to determine whether it will pull them permanently or eventually return them to auction (*E&E News PM*, June 2).

NATIONAL MONUMENTS

Tribes push back against Bears Ears cuts

Published: Friday, June 23, 2017

Tribal leaders and state politicians yesterday pushed back against Interior Secretary Ryan Zinke's proposed trimming of the newly formed Bears Ears National Monument.

At a discussion hosted by the University of Utah, panelists sought to dispel what they say is "misinformation and a false narrative" pushed by Utah politicians.

"The monument gives us an opportunity to apply our traditional knowledge in the management of the Bears Ears region. We are doing this for our children so they will have an opportunity to teach their kids the stories and their significance for the Navajo Nation," said Oljato chapter President James Adakai. "We hold reverence to the land, and we want that to remain forever."

Zinke has not yet specified which areas would be left out of the monument under his proposal. The Interior secretary earlier this week defended the cuts and his conversations with tribal leaders, saying tribes are split over the issue (*E&E News PM*, June 20).

But tribal leaders yesterday expressed frustration with Republicans in Congress who have challenged the monument's large size as well as tribal and federal jurisdiction under the Antiquities Act.

"This is our homeland, and we will utilize every law at our disposal to protect it. In this case, it's the Antiquities Act," said Arizona state Rep. Eric Descheenie (D) (Brian Maffly, *Salt Lake Tribune*, June 22). — NS

OCEANS

Federal panel moves to protect some corals, waits on others

Published: Friday, June 23, 2017

A federal panel yesterday offered new protections to deep-sea corals in the Atlantic Oceans but stopped short of protecting others so it can gather more information first.

The proposals from the New England Fishery Management Council focus on corals in the Gulf of Maine and south of Georges Bank off the coast of Massachusetts.

"The goal is to protect as much coral as you can while minimizing impact on various industries that are fishing near the corals," said John Bullard, a regional administrator for the National Marine Fisheries Service and a member of the fishery council.

The proposals, which have been debated by environmentalists and fishing groups, need to be approved by the federal Department of Commerce.

The committee decided to hold off on voting on plans for protecting coral south of Georges Bank, saying it needs more updated fishery data first (Patrick Whittle, *AP/San Francisco Chronicle*, June 22). — **CS**

INVASIVE SPECIES

Deadly fire ants float en masse after Tropical Storm Cindy

Published: Friday, June 23, 2017

Alabama officials are warning residents to watch out for floating masses of fire ants in the wake of flooding caused by Tropical Storm Cindy.

Fire ants, which spread by accident to Alabama from South America in the 1930s, are known for their aggression and painful bite, and the insects are just as dangerous in wet conditions as they are in dry conditions, Alabama officials said.

As floodwaters rise, the invasive ants cling together with their legs and feet, forming a raft that can stay afloat for up to 12 days, said University of Arkansas professor Kelly Loftin.

"Those ants that are trapped under the water will collect bubbles to break that surface tension and raise up the raft so it can float," Loftin said. "They move around so that no individual remains submerged in the water for long" (Peter Holley, *Washington Post*, June 22). — **NS**

MINING

Electric car sales boost lithium manufacturers

Published: Friday, June 23, 2017

Surging lithium demand as a result of increasing electric car sales is boosting the share prices of companies linked to mining and manufacturing the light metal.

Global X Lithium & Battery Tech, an exchange-traded fund for some of the world's largest companies linked to lithium, has increased more than 60 percent in the last 18 months.

"The acceleration in technology, including electric vehicles, could push new metals a lot higher," said Eily Ong, an analyst at Bloomberg Intelligence.

Electric car sales last year skyrocketed to 2 million, and mainstream carmakers, including Renault-Nissan and Volkswagen, are pushing for new emissions-free models.

That demand is feeding lithium-mining companies, which are scrambling to open new mines to keep up, experts say (Jonathan Tirone, *Bloomberg*, June 22). — **NS**

WILDFIRES

Searing heat wave complicates firefighting efforts

Published: Friday, June 23, 2017

Extreme heat in the southwest U.S. created tough conditions for firefighters battling a series of wildfires this week, including one in Arizona that has destroyed four homes.

Temperatures rose to nearly 120 degrees in parts of Arizona, California and Nevada.

In California, two firefighters were treated for injuries related to the heat as they battled a blaze in the San Bernardino Mountains. In New Mexico, a brush fire destroyed sheds and vehicles, sending two residents and a firefighter to the hospital. And in Arizona, about 100 firefighters fought a 2-square-mile blaze in Sonoita, thought to be ignited by lightning.

"The heat is a major factor not only for us getting overheated but heat will rise up our embers, which will cause more fires to pick up," said Joseph De Wolf, chief of the Sonoita-Elgin Fire District.

Across Arizona, firefighters are working on around 30 fires, spreading resources thin.

Another fire in Utah, touched off by someone using a torch to burn weeds, forced 700 people to evacuate and shut down part of a state highway (Galvan/Wang, [ABC News](#), June 21). — **SM**

POLITICS

Mayors to address climate change at annual meeting

Published: Friday, June 23, 2017

More than 250 U.S. mayors meet in Miami Beach, Fla., today to kick off the annual national mayoral conference. Climate change is on the top of the agenda.

With many cities pushing back against the Trump administration's environmental and climate policies, the mayors plan to discuss how to reduce carbon emissions and potential collaboration.

Other top issues include protecting immigrant families — another Trump rebuttal — and curbing gun violence.

Top speakers include former New York City Mayor Michael Bloomberg, U.S. Labor Secretary Alex Acosta and U.S. Veterans Affairs Secretary David Shulkin.

The mayors vote Monday on policy resolutions to send to Washington lawmakers ([AP/Fort Worth Star-Telegram](#), June 23). — **NB**

CLIMATEWIRE

AN E&E NEWS PUBLICATION

CLIMATEWIRE — Mon., June 26, 2017



READ FULL EDITION

1. PEOPLE:

Meet Jerry Brown, from 'Gov. Moonbeam' to climate beacon

CHENGDU, China — California Gov. Jerry Brown, leader of the world's sixth-largest economy and the longest-serving governor in state history, is making climate change a signature focus of his final term. And he has made it his mission to jolt the world into action with a combination of tough talk and distinctly religious fervor.

TOP STORIES

2. RENEWABLE ENERGY:

Scientists search a gorge for the secrets of wind

3. INTERIOR:

Is Zinke cherry-picking data to boost drilling?

LAW

4. COURTS:

Indian fishermen lose suit against coal lender

STATES

5. OHIO:

Utilities face opposition to funding plan

BUSINESS

6. TRANSPORTATION:

Rare electric school buses slowly gain traction

7. RENEWABLES:

Investment strong despite Trump's support for fossil fuels

INTERNATIONAL

8. CHINA:

High-stakes carbon trading market set to launch

9. PARIS AGREEMENT:

U.S. withdrawal could mean submersion for some islands

COMMUNICATIONS

10. EPA:

Ex-staffer: Climate website removal 'declaration of war'

ENERGYWIRE — Mon., June 26, 2017



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Wind works its way toward baseload power in the Northwest

As officials debate the meaning of "baseload," two wind operators in the Pacific Northwest are demonstrating how wind power can be as reliable as a coal.

TOP STORIES

2. GENERATION:

'This ain't working': Study authors see trouble in merchant sector

3. NUCLEAR:

Westinghouse parent's finances erode ahead of key U.S. deadlines

FEDERAL AGENCIES

4. EPA:

Journalists chide Pruitt for keeping records secret

ELECTRICITY

5. SOLAR:

Tariffs would slash demand in half — report

OIL AND GAS

6. REGULATION:

Ill. gears up for fight over first fracking well

7. ADVOCACY:

Top energy official urges enviros to stop fracking rhetoric

8. OIL MARKETS:

Gas prices hit new lows as U.S. shale oil glut confounds OPEC

9. PEOPLE:

Sunoco CEO to retire

10. REGULATION:

Wyo. agency will track failed oil and gas operators

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Message

From: Porter, Amy [Porter.Amy@epa.gov]
Sent: 6/6/2019 6:01:47 PM
To: Koslow, Karin [Koslow.Karin@epa.gov]
Subject: FW: Draft Thank-You Email from Bodine to Murray re meeting on Muni SEPs

OMG you are right!!!! I feel awful!

From: Kelley, Rosemarie
Sent: Wednesday, June 05, 2019 9:56 AM
To: Porter, Amy <Porter.Amy@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>
Subject: RE: Draft Thank-You Email from Bodine to Murray re meeting on Muni SEPs

Ex. 5 AC/DP

Rosemarie

From: Porter, Amy
Sent: Wednesday, June 05, 2019 9:53 AM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>
Subject: FW: Draft Thank-You Email from Bodine to Murray re meeting on Muni SEPs
Importance: High

Caroline is accepting Larry's comments and will send a clean version to Rosemarie to send up.

From: Starfield, Lawrence
Sent: Wednesday, June 05, 2019 9:09 AM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Cc: Koslow, Karin <Koslow.Karin@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>
Subject: RE: Draft Thank-You Email from Bodine to Murray re meeting on Muni SEPs
Importance: High

This looks good. I had a few suggestions, below. Please consider them, and then send a revised version to both Susan and me so that we can issue this today. Thanks.

Larry

This message is CONFIDENTIAL, and may contain legally privileged information. If you are not the intended recipient, or believe you received this communication in error, please delete it immediately, do not copy, and notify the sender. Thank you.

From: Kelley, Rosemarie
Sent: Tuesday, June 04, 2019 7:03 PM
To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Cc: Koslow, Karin <Koslow.Karin@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Makepeace, Caroline

<Makepeace.Caroline@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Buterbaugh, Kristin
<Buterbaugh.Kristin@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>

Subject: Draft Thank-You Email from Bodine to Murray re meeting on Muni SEPs

Larry—Here is our proposed note from Susan to Claire. We look forward to your feedback.

Ex. 5 AC/DP

Ex. 5 AC/DP

Please let me know if I can provide any further information.

Susan

Regards,
Rosemarie A. Kelley, Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
202-564-4014

Message

From: Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Sent: 7/29/2019 5:41:22 PM
To: Koslow, Karin [Koslow.Karin@epa.gov]; Porter, Amy [Porter.Amy@epa.gov]; Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]
CC: Buterbaugh, Kristin [Buterbaugh.Kristin@epa.gov]
Subject: RE: Rosemarie's notes on [REDACTED] Ex. 7(A)

Thanks!

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Koslow, Karin
Sent: Monday, July 29, 2019 1:00 PM
To: Porter, Amy <Porter.Amy@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>
Cc: Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>
Subject: Rosemarie's notes on [REDACTED] Ex. 7(A)

Here are notes Rosemarie shared re: the muni SEPs in play, based on her discussions with RCs. This is relevant to our discussion tomorrow with Larry during our weekly about scheduling a discussion w/certain Regions about a national strategy for managing these.

Thanks,
Karin

Karin Koslow
Deputy Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Desk: (202) 564-0171
Cell: (202) 716-5645
WJC South Room 3142D

From: Kelley, Rosemarie
Sent: Friday, July 26, 2019 6:04 PM
To: Koslow, Karin <Koslow.Karin@epa.gov>
Cc: Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>
Subject: my notes on [REDACTED] Ex. 7(A)

Ex. 5 AC/DP

Rosemarie Kelley, Director

Office of Civil Enforcement

OECA

Message

From: Porter, Amy [Porter.Amy@epa.gov]
Sent: 7/29/2019 5:06:44 PM
To: Koslow, Karin [Koslow.Karin@epa.gov]; Buterbaugh, Kristin [Buterbaugh.Kristin@epa.gov]
Subject: RE: Close hold - do not distribute - Draft SEPs State/Local Memo

Thanks.

From: Koslow, Karin <Koslow.Karin@epa.gov>
Sent: Monday, July 29, 2019 1:06 PM
To: Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>
Subject: Close hold - do not distribute - Draft SEPs State/Local Memo

This is JClark's draft SEP memo. Larry originally sent it to Rosemarie, Caroline, John and me. Larry was okay with us sharing this with a few others, as needed, so I wanted you both to have this.

At this point, I do not plan to share it with anyone else. After we have more clarity on next steps, we may decide to share with Div Directors.

Thanks,
Karin

Karin Koslow
Deputy Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Desk: (202) 564-0171
Cell: (202) 716-5645
WJC South Room 3142D

Message

From: Sheppard, Tracy [Sheppard.Tracy@epa.gov]
Sent: 7/3/2017 11:51:46 AM
To: Siciliano, CarolAnn [Siciliano.CarolAnn@epa.gov]; Koslow, Karin [Koslow.Karin@epa.gov]
Subject: RE: Cross-Cutting Issues News for June 26, 2017 -- SEPs and new Attorney General policy

That'll work. Thanks.

Tracy L. Sheppard, Attorney-Advisor,
US EPA, Office of General Counsel
Sheppard.Tracy@epa.gov
(202) 564-1305 office
(202) 839-2038 mobile

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From: Siciliano, CarolAnn
Sent: Friday, June 30, 2017 10:50 PM
To: Sheppard, Tracy <Sheppard.Tracy@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>
Subject: RE: Cross-Cutting Issues News for June 26, 2017 -- SEPs and new Attorney General policy

Ok, Tracy. Maybe August 9 instead for the ORC/OGC meeting & Reg Review?

Carol Ann Siciliano
Associate General Counsel
Cross-Cutting Issues Law Office
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-5489
siciliano.carolann@epa.gov

From: Sheppard, Tracy
Sent: Friday, June 30, 2017 12:06 PM
To: Koslow, Karin <Koslow.Karin@epa.gov>; Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov>
Subject: RE: Cross-Cutting Issues News for June 26, 2017 -- SEPs and new Attorney General policy

I'll work on preparing something for an upcoming reg review. I won't be available to present at the 7/12 meeting. I'll be in MS for the DWH Gulf Coordination meeting from 7/10 to 7/12.

Tracy L. Sheppard, Attorney-Advisor,
US EPA, Office of General Counsel
Sheppard.Tracy@epa.gov
(202) 564-1305 office
(202) 839-2038 mobile

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From: Koslow, Karin
Sent: Friday, June 30, 2017 12:02 PM
To: Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov>; Sheppard, Tracy <Sheppard.Tracy@epa.gov>
Subject: RE: Cross-Cutting Issues News for June 26, 2017 -- SEPs and new Attorney General policy

Will do!

Karin Koslow
Deputy Associate General Counsel
Cross-Cutting Issues Law Office
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-0171
WJC North Room 7358

From: Siciliano, CarolAnn
Sent: Thursday, June 29, 2017 7:36 PM
To: Koslow, Karin <Koslow.Karin@epa.gov>; Sheppard, Tracy <Sheppard.Tracy@epa.gov>
Subject: FW: Cross-Cutting Issues News for June 26, 2017 -- SEPs and new Attorney General policy

This is a very interesting article. **Tracy**, could you prepare a five-minute update for Reg Review (any time in the next few

Ex. 5 AC/DP

No rush. But this is interesting. And perhaps we could share our learnings with the Regional Counsels at the next Monthly Call – Wednesday July 12 at 4 pm, room 4045. You could be our guest speaker. **Karin**, could you keep track of this and add this topic to the 7/12 ORC/OGC agenda if Tracy is ready?

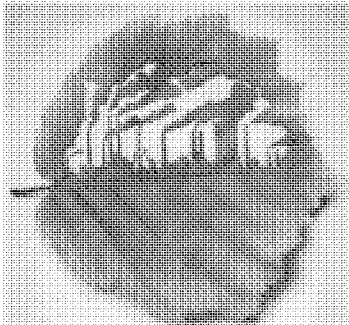
Backing EPA's SEP Policy, DOJ Seeks To Ease Fears Over Settlement Bar

The Justice Department (DOJ) is seeking to ease fears that Attorney General Jeff Sessions' recent memo barring third-parties from receiving monetary payments in legal settlements will undercut EPA's popular supplemental environmental projects (SEPs), saying that projects that comply with EPA policy, which already prohibits third-party payments, will not be affected by Sessions' memo.

Carol Ann Siciliano
Associate General Counsel
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(202) 564-5489
siciliano.carolann@epa.gov

From: OGCLibrary
Sent: Monday, June 26, 2017 11:56 AM

To: Allnutt, David <Allnutt.David@epa.gov>; Bigioni, Neil <bigioni.neil@epa.gov>; Cozad, David <Cozad.David@epa.gov>; Dierker, Carl <Dierker.Carl@epa.gov>; Dolph, Becky <Dolph.Becky@epa.gov>; Engelman, Alexa <ENGELMAN.ALEXA@EPA.GOV>; Frey, Bert <frey.bertram@epa.gov>; Harrison, Ben <Harrison.Ben@epa.gov>; Kaplan, Robert <kaplan.robert@epa.gov>; Kelly, Lynn <Kelly.Lynn@epa.gov>; Mackey, Cyndy <Mackey.Cyndy@epa.gov>; Matthews, Julie <Matthews.Juliane@epa.gov>; Nguyen, Quoc <Nguyen.Quoc@epa.gov>; Schaaf, Eric <Schaaf.Eric@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>; Stern, Allyn <Stern.Allyn@epa.gov>; Walker, Mike <Walker.Mike@epa.gov>; Ward, W. Robert <Ward.Robert@epa.gov>; Williamson, Timothy <Williamson.Tim@epa.gov>; OGC CCILO <OGC_CCILO@epa.gov>; Vergeront, Julie <Vergeront.Julie@epa.gov>; Kaminer, Joan <Kaminer.Joan@epa.gov>; OGC FEAT <OGC_FEAT@epa.gov>; Harwood, Jackie <Harwood.Jackie@epa.gov>; Rongone, Marie <Rongone.Marie@epa.gov>; Hanselman, Erik <Hanselman.Erik@epa.gov>
Subject: Cross-Cutting Issues News for June 26, 2017



Cross-Cutting Issues News for June 26, 2017

Bloomberg BNA Daily Environment Report™

Leading the News

Courts

Property Rights Curbed by Top U.S. Court in Development Case

The U.S. Supreme Court dealt a blow to property-rights advocates June 23, ruling that regulators didn't violate the U.S. Constitution when they refused to allow separate houses on adjoining riverfront lots owned by four siblings.

General Policy

Week Ahead: Alaska Senator Has Dual Clout on Environment, Energy

Sen. Lisa Murkowski (R-Alaska), who chairs the Energy and Natural Resources Committee, also has clout on environmental matters—and she'll make her influence felt at a Tuesday hearing that's one of numerous events in those areas during the week of June 26.

News

Endangered Species

German Bill May Ease Construction on Land With Protected Species

The lower house of the German Parliament, the Bundestag, passed a bill late June 22 amending the country's Federal Act for the Protection of Nature, making it easier for construction projects to move forward even if they threaten protected species.

Forests

Norway Slashes Contribution to Anti-Deforestation Amazon Fund

Norway, which has donated more than \$1 billion in the past decade to the Amazon Fund to fight deforestation, will significantly scale back its contribution this year, arguing that Brazil's commitment to environmental protection "might be in retreat."

White House

Tech in One Hand, Overhaul in Other, Trump Tackles Government

President Donald Trump's plans to use new technology to modernize the federal government—claiming \$1 trillion in savings and better services—may outstrip his proposal to overhaul agencies to make them more effective.

Hill Watch

Hill Watch: Climate Regulation

The following chart summarizes the status of key environmental policy legislation pending in Congress. The first column provides a synopsis of the purpose, content, and support for the legislation. The second column summarizes the provisions of the legislation. The third column outlines the procedural path ahead and the political prospects for enactment of the bills.

Hill Watch: Coal Mining

Hill Watch: Science Policy

Regulatory Agenda

TODAY'S FEDERAL REGISTER

NOTICE. Daily Environment Report's Regulatory Agenda, Comment Deadlines, and Federal Register summaries are now published as part of EHS Federal Regulatory AlertTM <http://news.bna.com/frmn/>.

TODAY'S STATE REGISTERS

NOTICE. State Register summaries are published as part of EHS State Regulatory AlertTM <http://news.bna.com/srmn/>.

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Latest News

Backing EPA's SEP Policy, DOJ Seeks To Ease Fears Over Settlement Bar

The Justice Department (DOJ) is seeking to ease fears that Attorney General Jeff Sessions' recent memo barring third-parties from receiving monetary payments in legal settlements will undercut EPA's popular supplemental environmental projects (SEPs), saying that projects that comply with EPA policy, which already prohibits third-party payments, will not be affected by Sessions' memo.

Daily Feed

D.C. Circuit sets argument in Trump '2-1' order lawsuit

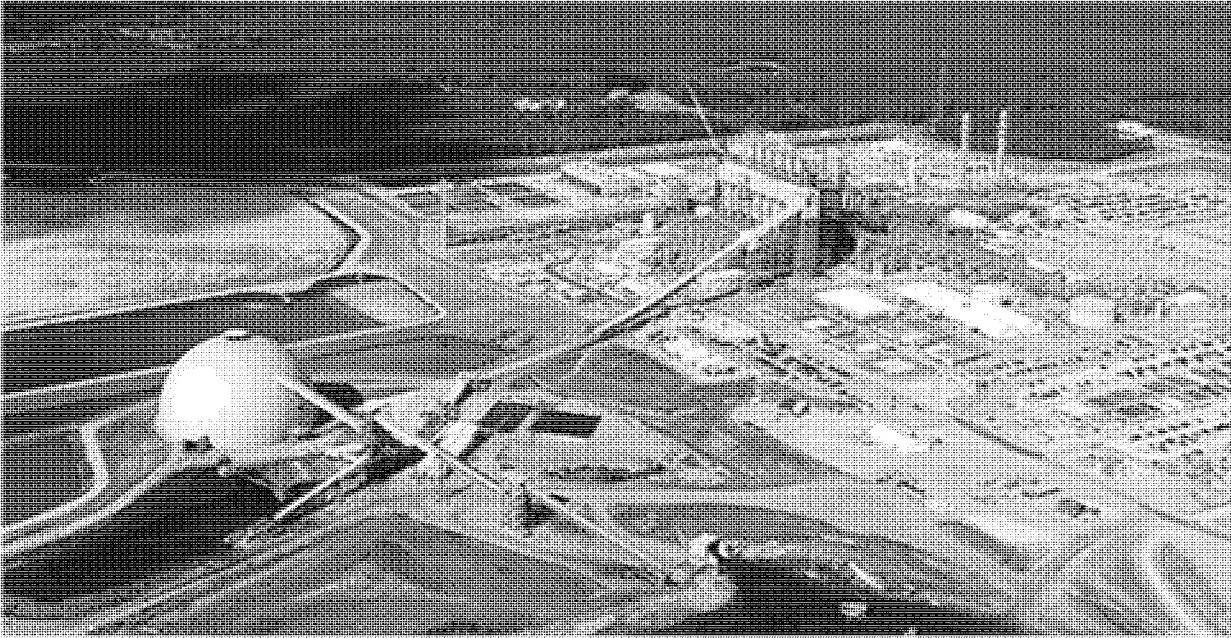
Judge Randolph Moss schedules Aug. 10 arguments in litigation over President Trump's order that requires EPA to repeal two rules for every new measure issued.

CARBON CAPTURE

Post-Kemper question: Is 'clean coal' dead?

Christa Marshall, E&E News reporter

Published: Friday, June 23, 2017



An aerial view of Mississippi Power's Kemper County Energy Facility. Mississippi Power

The possible end of Southern Co.'s flagship "clean coal" project in Mississippi isn't the death knell for carbon capture and sequestration technology, industry analysts say.

Instead, the problems at the Kemper County Energy Facility — which state regulators want to turn into a natural gas plant after years of delays and cost overruns — resulted from a unique series of events and a coal gasification system that was scaled up too fast.

The plant's equipment to capture and store carbon dioxide didn't cause its current challenges and is still an option for coal and other fossil fuels, said Erin Burns, a policy adviser in the clean energy program at Third Way, a centrist Democratic think tank.

"This is absolutely not the death of CCS," she said.

A string of CCS successes this year, including the launch of the world's largest retrofit of a coal plant with carbon capture technology, make it clear the technology works, she said. Other large projects have opened in the Middle East and Illinois this year to trap CO₂ from steel and ethanol manufacturing.

Still, both critics and boosters of making coal cleaner in a world worried about climate change have been looking to Kemper as a model for future development. For many, Kemper was at least part of the future of coal.

That's why so many observers were shocked when on Wednesday the Mississippi Public Service Commission asked Southern Co. subsidiary Mississippi Power to find a settlement within 45 days that would abandon the Kemper plant's coal and CCS operations ([Energywire](#), June 22).

The PSC said it was seeking a solution that would "eliminate ratepayer risk for unproven technology." Under the framework, Kemper would operate solely on natural gas, a fuel that has already been running the plant for years.

In a statement, Mississippi Power emphasized that no final decisions have been made, and that discussions with the PSC are ongoing.

"The PSC provided several guidelines to consider for the negotiations, including the possibility of the project only operating as a natural gas-fueled combined cycle plant. We look forward to reviewing the order," the company said.

Kemper, with a price tag now around \$7.5 billion, has been under construction since 2010. Developers envision gasifying lignite coal into synthetic gas and capturing 65 percent of the resulting CO2 emissions.

Unique case

If fully operational, it would be the second U.S. coal plant to capture the majority of its carbon emissions, after NRG Energy Inc.'s Petra Nova project in Texas, which launched this year.

Most of the recent setbacks for Kemper centered around its two gasifiers, which turn lignite coal from a mine near the plant into synthetic gas.

In January 2016, for instance, Mississippi Power said one of the gasifiers got hotter than anticipated during testing, causing cracks in the lining. The plant has operated approximately 200 days on lignite, said the company.

What's significant is that the gasifiers are separate from the carbon capture or "clean coal" portion of the plant, said John Thompson, director of the fossil transition project at the Clean Air Task Force.

The capture unit involves an antifreeze-like solvent called Selexol to strip CO2 that has been in use in other facilities since the 1960s.

"The capture equipment was actually the most mature part of this plant," Thompson said.

The same cost overruns and delays would have occurred even if Kemper had never tried to use CCS, he said, noting that coal gasification in general has been done successfully elsewhere with different technology.

In Mississippi, Southern was trying out its new transport integrated gasification (TRIG) technology, designed to be a model for gasifying "low-rank" lignite coals, which are common in countries like India.

Southern's experience differed from others in the sense TRIG was not tested extensively at commercial scale before being tried at a power plant. The gasifier was used at a testing center, but at a size about one-hundredth that of Kemper.

"They went from the pilot plant level to, like, 600 megawatts. People at the time thought they were way too ambitious. And it's been proven out," said Massachusetts Institute of Technology carbon capture expert Howard Herzog.

Coal's woes

Kemper also ran into other issues not related to CCS, such as labor challenges and expiring Department of Energy grants. It didn't help that a consistent drop in natural gas prices after the plant's groundbreaking seven years ago made the idea of turning coal into gas less of a viable concept.

Kemper's fate also may have been sealed before it ever broke ground. In an interview last year, Southern CEO Tom Fanning said the one thing he would change about the project was committing to a fixed price for customers with only 10 percent of the plant's engineering work completed.

"If we had taken more time to do more engineering ... we would have circumvented a lot of the problems that we incurred," Fanning said.

Critics of CCS have long said that Kemper was a huge waste of funds that could have been directed to other clean-energy solutions.

In a report last year, Friends of the Earth and Taxpayers for Common Sense said Kemper is "a stark reminder of why carbon capture and sequestration is a waste of our tax dollars and a false solution to the climate crisis."

Whether the plant's woes will hurt support for CCS policy is an open question. Thompson and other CCS supporters say advancing carbon capture and putting new incentives in place for it is critical for climate change because of the world's ongoing reliance on coal.

Supporters on Capitol Hill are pushing for an expansion of existing tax credits to provide more certainty to developers, among other incentives (*E&E Daily*, Dec. 6, 2016).

Problems for Southern

Kemper was a potential model in places like China, which has a lot of facilities that are gasifying coal to make chemicals and venting the CO₂ into air, said Thompson.

But Petra Nova, which began operations on budget and on time, is perhaps the more relevant model for CCS because of its status as a retrofit, according to many analysts. That is especially relevant in the U.S., which is not building new coal plants, much less coal gasification plants.

While gasification has worked elsewhere, it has "totally soured" as a concept for the power sector, according to Herzog. You don't need to gasify to do CCS, he said.

"Look at Petra Nova," he said. In addition to not gasifying coal, Petra Nova completed 90 percent of its conceptual design before it began construction.

Regardless of what Kemper may mean for CCS in general, it does mean a lot for Southern, which could be left with a CO₂ pipeline, coal mine and gasifier system to nowhere in a natural-gas-only scenario.

Issues that have to be addressed include an existing contract with Denbury Resources Inc. to use Kemper's CO₂ in enhanced oil recovery.

The utility signed several memorandums of understanding in recent years to explore the use of its TRIG technology at overseas projects. In December 2015, for instance, Southern penned a letter of intent with a South Korean company to evaluate the deployment of TRIG at a new 1,000-MW power plant.

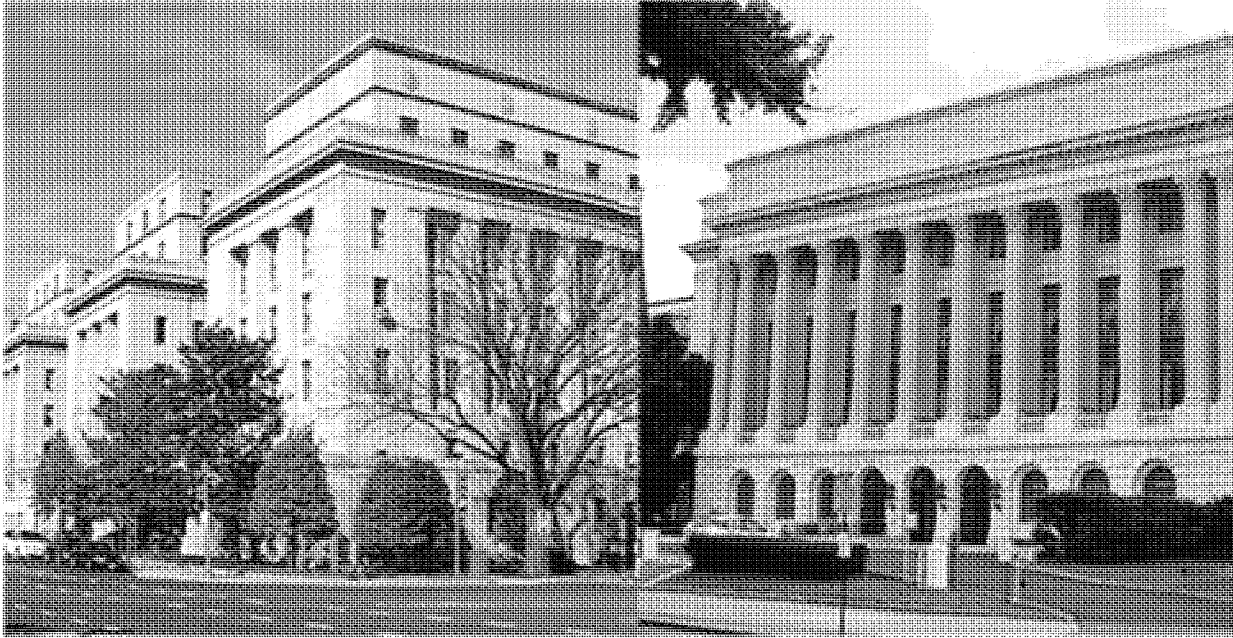
One thing that might not be an option if the plant becomes gas-only is use of the existing carbon capture infrastructure. Selexol typically is used when the CO₂ concentration in flue gas is high, which is much more suited to coal than natural gas, according to Thompson.

He called for an investigation into all the factors that led to this point. "There really needs to be an analysis of what went wrong," Thompson said.

PUBLIC LANDS

Trump homes in on 4 conservation picks

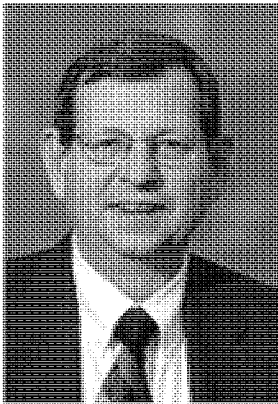
Corbin Hiar, E&E News reporter



The Trump administration is close to naming picks for four public land management positions at the Interior and Agriculture departments, sources say. Department of Interior; Wally Gobetz/Flickr

The Trump administration may be close to naming four key public land management positions, according to sources in the recreation and ranching communities.

Larry Voyles, who has led Arizona's Game and Fish Department since 2008, is believed to be in the running for Interior's assistant secretary for fish, wildlife and parks. He is set to retire from the state game office on July 26.



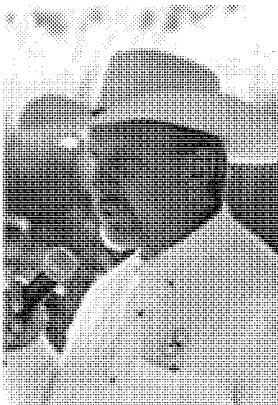
Larry Voyles. Arizona Game and Fish Department

That Interior position, which oversees the Fish and Wildlife Service and National Park Service and requires Senate confirmation, is currently held on an acting basis by Aurelia Skipwith. A former manager at the agriculture giant Monsanto Co. who would serve as his deputy, Skipwith was hired by Interior Secretary Ryan Zinke earlier this year ([Greenwire](#), April 6).

Voyles is a strong advocate of state wildlife management and clashed with the Obama administration's FWS over its recovery plan for the Mexican gray wolf.

Voyles is "a guy that understands the West and collaboration with state agencies," said one sportsmen's group executive. "He's someone that's highly approachable and someone that you can work with."

But another source expressed skepticism about Voyles' chances to land the high-ranking post. He has little direct experience managing parks and is believed to have been passed over for the FWS director position.



Scott Talbott. Talbott/LinkedIn

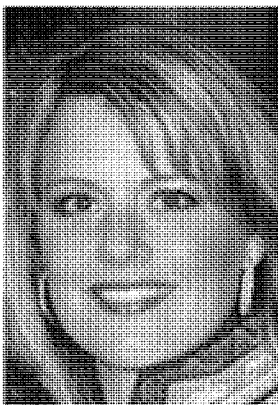
That job, several sources said, is likely to go to Scott Talbott. He is the director of Wyoming's Game and Fish Department and has a strong background in law enforcement.

Talbott grew up on a sheep ranch outside of Laramie, Wyo., according to his [official biography](#). One of his first jobs was as a lumberjack. He has worked for the state game office since 1985 and led it since 2011.

"We know Scott to be a fair-minded state agency director," said the source. "He's been in a position to help look at ways to balance energy extraction in a manner that has the least amount of impact on public lands and fish and wildlife habitat."

Earlier this month, Zinke hired Greg Sheehan, the former head of Utah's Division of Wildlife Resources, to serve at FWS in a newly created deputy director position. The move was seen by some sources as an effort to install political leadership at the service while the White House and the Senate vet the secretary's director pick ([E&E News PM](#), June 5).

A couple of sources said they expect Talbott and other likely Interior nominations to be announced after the Senate confirms David Bernhardt, Zinke's pick for deputy secretary ([Greenwire](#), June 16).



Erica Rhoad. Rhoad/LinkedIn

Another long-rumored conservation pick is Erica Rhoad, the staff director of the House Natural Resources Subcommittee on Federal Lands. She is widely believed to be a front-runner for the Agriculture Department's undersecretary for natural resources and the environment, a Senate-confirmed job that would entail overseeing the Forest Service.

Rhoad came to the subcommittee after lobbying for the National Rifle Association and the Society of American Foresters ([Greenwire](#), Jan. 27, 2016).

"I don't quite understand what the hangups are" to Rhoad's expected nomination, another sportsmen's group official said. "We know Erica. We can work with Erica. She'd be fine."

The undersecretary post Rhoad is in line for is currently held by Dan Jiron, a career official ([E&E Daily](#), June 19).

Sources also mentioned Rick Cables, the vice president of natural resources and conservation for Vail Resorts, as a possible pick for Forest Service chief.



Rick Cables. Cables/LinkedIn

Cables spent 35 years at the Forest Service, rising to the rank of regional forester, a title he held in both the Alaska and Rocky Mountain regions. He left the service six years ago to join the Colorado state government, where he oversaw the merger of the state's parks and wildlife division.

Since 2013, he has worked for Vail, which has a long-term lease with the Forest Service.

"He was campaigning for it early on," the official said of Cable's chief bid. "He came back here right after the election and did the rounds and threw his hat in the ring."

Cables could be hired immediately to replace Tom Tidwell, who served as chief for nearly the entirety of the Obama administration.

But the fact that he hasn't gotten the nod has led some sources to speculate that Agriculture Secretary Sonny Perdue may be content to leave Tidwell in place as he focuses on filling more than a dozen other key posts at the department (*E&E Daily*, June 14).

Alternatively, one ranching group official suggested that Perdue may be waiting to put Rhoad in place before the chief, who would report to her.

Spokesmen for USDA and all of the rumored administration picks didn't respond to requests for comment.

Interior press secretary Heather Swift said, "We do not have any personnel announcements at this time."

Reporter Marc Heller contributed.

PROPERTY RIGHTS

High court rejects takings claim in waterfront case

Jeremy P. Jacobs and Amanda Reilly, E&E News reporters



Donna Murr and her siblings said the government illegally took their private property along Wisconsin's St. Croix River. The Supreme Court today ruled against them. Pacific Legal Foundation

The Supreme Court today ruled against a Wisconsin family who claimed the state had unfairly taken their property without just compensation when it denied their bid to sell part of their riverfront property.

Though the case hinged on an esoteric legal principle, it has been closely watched by property rights activists and real estate developers because the Supreme Court has not provided much guidance on the "parcel as a whole" concept in its jurisprudence. Nine states led by Nevada, as well as the U.S. Chamber of Commerce and other groups, supported the family in the lawsuit.

Murr v. Wisconsin concerned a set of siblings who wanted to put one of two adjacent lots on the St. Croix River that they had inherited from their parents on the market.

A 1975 change in land-use ordinances, however, said the two lots had become a single parcel due to various factors, including their physical characteristics and common ownership by the Murrs.

The state denied the siblings' request to sell the vacant lot in Troy, Wis., and the Murrs sued, contending that the ordinance amounted to an unconstitutional taking without just compensation because it limited their options for the property. Namely, they could not sell it alone.

Today, the court ruled 5-3 that the Wisconsin land-use ordinance was reasonable, and upheld the state court's ruling against the Murrs. Justice Neil Gorsuch did not participate in the ruling; the case was argued before he was confirmed to the court.

Justice Anthony Kennedy, writing for the majority, said several factors contributed to the conclusion that the ordinance did not constitute a taking.

First, he said courts should give significant weight to a state's ability to set land-use ordinances.

Second, he agreed with Wisconsin that the court should consider the physical characteristics of the property. Though each of the Murrs' lots is over 1 acre — a key factor in the land ordinance — they both feature a steep bluff cutting through the center. Consequently, there is less than 1 acre of suitable space to be developed in both lots combined.

"[T]he physical characteristics of the property support its treatment as a united parcel," Kennedy wrote, adding that it was "reasonable to expect their range of potential uses might be limited."

Perhaps most importantly, Kennedy pointed directly to the appraisal of the lot provided by the Murrs. The appraisal valued the lot they wanted to sell at \$40,000 if it were left undeveloped. The value of the two lots together was pegged at \$698,300 — so the vacant lot represented less than 10 percent.

"[T]he government action was a reasonable land-use regulation, enacted as part of a coordinated federal, state, and local effort to preserve the river and the surrounding land," Kennedy wrote.

Kennedy was joined in the majority by the court's liberal wing: Justices Elena Kagan, Sonia Sotomayor, Stephen Breyer and Ruth Bader Ginsburg.

The typically more conservative justices dissented.

Chief Justice John Roberts wrote that Kennedy's "bottom-line conclusion does not trouble me." But he quibbled with the factors on which Kennedy relied, including the physical characteristics.

The Murrs were represented by the conservative, California-based Pacific Legal Foundation.

"My brothers and sister and I are certainly disappointed in today's ruling," Donna Murr said in a statement.

John Groen, PLF's general counsel, argued that the decision was "unfortunate" both for the Murrs and "all property owners."

[Click here](#) for the opinion.

Q&A

Ex-DOE scientist on starting activist group, opposing Trump

[Hannah Hess](#), E&E News reporter

Published: Friday, June 23, 2017



Jane Zelikova is an ecologist who founded 500 Women Scientists after President Trump's election. 500 Women Scientists

Jane Zelikova helped launch a grass-roots science advocacy group in the wake of President Trump's election last fall that has attracted more than 20,000 women.

It began with a pledge published immediately following the 2016 election by Zelikova and three women she had met in graduate school at the University of Colorado, Boulder. She said they felt compelled to speak up for science and marginalized groups, including immigrants and people with disabilities.

When the letter went live, Zelikova was a Washington-based scientist working on carbon capture and storage in the Energy Department's Office of Fossil Energy.

E&E SERIES



Energy and environmental newsmakers dish on politics, pet peeves and their TV addictions. [Click here](#) to read more stories in this series.

The letter drew signatures from around the globe, representing women in disciplines ranging from accelerator physics to zoology. And the group, 500 Women Scientists, took off as the founders promoted the cause. Zelikova co-wrote a February op-ed, for instance, calling on U.S. EPA Administrator Scott Pruitt to reconsider his stance on climate science.

Zelikova then decided to head West and would eventually walk away from her two-year American Association for the Advancement of Science fellowship.

"Meet Jane, a climate scientist who fled Trump's government," was the headline on a profile of Zelikova published by the nonprofit news organization *High Country News*, which detailed the Ukrainian immigrant's decision to quit.

Zelikova talked to E&E News last week on her final day at DOE about the rewards and challenges of working in the federal government, the frenetic pace of her days and what makes it worthwhile.

Tell me about how 500 Women Scientists was launched.

It started as a text message string between four friends who met in Colorado in grad school. We all sort of spread out all over the world after graduating, but we stayed in touch, and we text messaged each other almost every day — updates of what we were up to, pictures of our kids and our dogs. And then as the election neared, those text messages became more political. Because I was in D.C., people were asking me to sort of update them on what was happening.

The night of the election, the text messages took a more concerned tone. For a couple of days, we were just mostly texting about being worried. At some point, we decided that we were going to write an open letter expressing all of the concerns that we had been expressing to each other. We published it in *Scientific American*, hoping that we could get 500 signatures from other women scientists that agreed with us and felt like the message resonated with them. Within just a matter of hours, we had reached our 500-signature goal, and it kept growing. Within another week, we had thousands of signatures. So the letter sort of became the banner under which we organized and created a grass-roots organization for women scientists to come together to speak up for the things that matter to us, like science and empowering women and pushing for diversity and inclusivity in science.

What was your career path in the federal government? And how did you arrive at the decision to quit?

After earning a Ph.D. in ecology, I was hired as a postdoc at the U.S. Geological Survey in Utah, and I started working on a climate change experiment. I then received a two-year Mendenhall Research Fellowship, working on topics related to climate change, carbon and livestock grazing across the U.S. Then I moved to the University of Wyoming for another postdoc to look at different climate change experiments and mostly focus on the impacts to plants and soil. About eight years after I graduated with my Ph.D., I started as an AAAS Science and Technology Policy fellow at DOE on leave from my position as a research scientist.

I hadn't ever really worked on energy before. Carbon capture and storage involves very interdisciplinary science that brings together innovation, technology and geology with subsurface science and basic biology. It was definitely a new

learning topic for me. I also started learning more about how the federal government works in D.C. There were a lot of meetings, and I got to meet a lot of great people. We work a lot with [nongovernmental organizations] and with Hill staffers to sort of explain the technology, answer questions and sort of link the work that we do with the benefits of the technology and the science behind it. It got at all the different parts that are interesting to me: the science, the technology and how it can really help people.

What does life look like post-DOE?

I spend my days thinking about, researching and talking about climate change. I usually need to take a break in the middle of the day and go for a bike ride or a hike or a run, because the topic is pretty difficult to get through a solid eight hours of. So I try to get outside as much as I can — usually every day. Because now I live in Colorado, that's a really easy and accessible thing for me. I spend a lot of my evenings working on 500 Women Scientists, and weekends are sort of split between getting outside and climbing or biking and working on 500 Women Scientists stuff.

It really does feel like running a startup, while having a full-time job. It sucks up a lot of my time that isn't my full-time job time as a researcher scientist. I work very hard to squeeze in time to get outside or see my friends or do the other things that I'm supposed to do as a normal, well-rounded human. The last six months have definitely felt like a startup schedule, which, you know, we did not sign up for and we did not expect, but that is what happened. It is a blessing because it resonates with people and it helps people all over the world. That part is really incredible. I would have never expected that, and it was not what we were trying for, but it's what happened. That's kind of undeniably powerful.

Do you define this as activism or advocacy?

It really feels more like activism. Although I feel like we advocate for things that should be self-explanatory: equality for women, a rightful place for science and innovation in our society, diversity in general. Those things are worth advocating for, and we do. I think, at least initially, a lot of what we were doing felt to me like activism because I was devoting so much of my time. I was rallying around points that were important to me, both as a scientist and as a woman, but also as an immigrant and a person who has close friends who are immigrants and refugees and close friends who are LGBT — people that felt threatened by both the rhetoric during the election and the outcome of the election.

That sounds like a full schedule. Is it ever too much?

A lot of times it feels very overwhelming. Then we will get an email or a message from someone. A lot of times it is from dads who are like, "Thank you so much for doing this; you guys are role models to my daughters." Or we'll get messages from women scientists who thank us for starting something they've been thinking about or that's so needed. That makes it meaningful in the times that it's really challenging. It's just a reminder that it matters to more than just us. It's kind of an incredible thrill and privilege to start something from nothing and to see it take off and to see people sort of relate to and value it.

Do you have advice to a woman who wants to get involved?

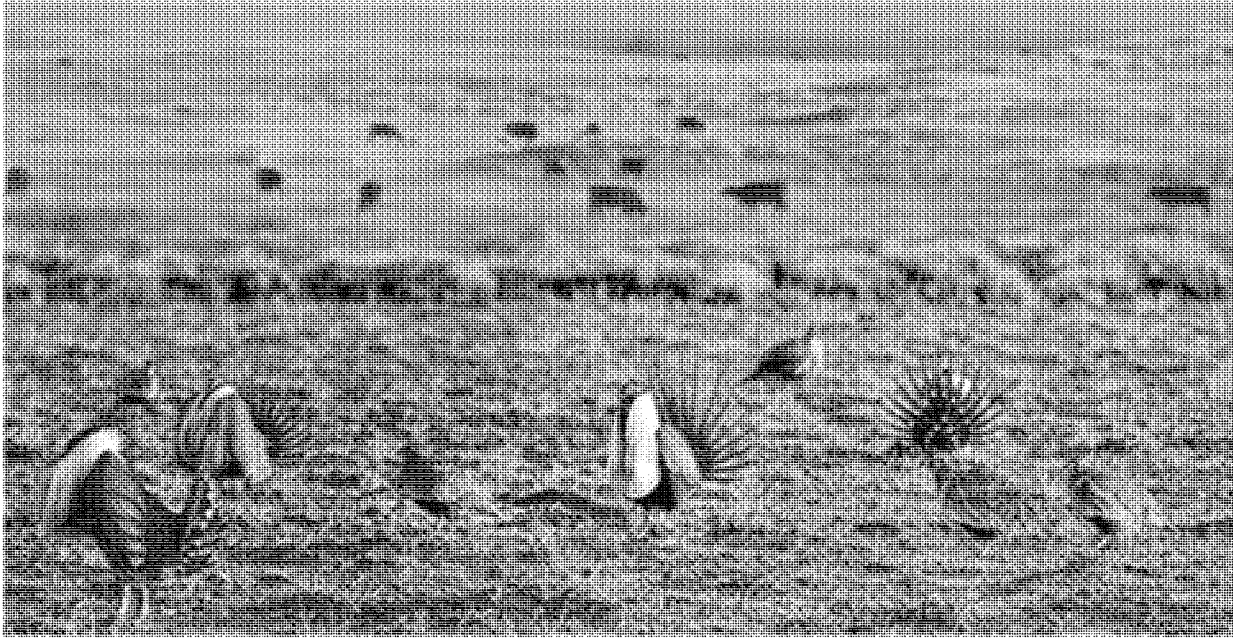
Go to 500womenscientists.org and click on the "Pods" button. Pods are sort of our local chapters. Find a pod in your area. I'm sure that there is one, because we have over 150 pods all over the U.S., but if there isn't one, then you can start a pod, and we make that very easy, too. Then you can be sort of the catalyst to bring together other women scientists in your area to have a community and a network and to think about and act for your community.

This interview has been edited and condensed.

SAGE GROUSE

Ad to Zinke: 'Stand with the West, not Washington'

Jennifer Yachnin, E&E News reporter



Environmentalists launched a new ad campaign urging Interior Secretary Ryan Zinke to leave sage grouse conservation plans alone. U.S. Department of Agriculture/Flickr

The Western Values Project today launched a six-figure ad campaign urging Interior Secretary Ryan Zinke to refrain from altering federal sage grouse conservation plans.

The Montana-based government watchdog group's new campaign will also call on Western state governors to "hold Secretary Zinke and Washington bureaucrats accountable" for attempting to roll back any of the conservation efforts finalized in 2015.

Advertisements will air on television and digital markets, as well as in print, in Colorado, Montana, Nevada and Wyoming. The spots are timed to coincide with the Western Governors' Association's annual meeting next week, which will be held in Montana and features Zinke as a keynote speaker.

"Secretary Zinke's Secretarial Order undermines years of bipartisan collaboration to conserve the greater sage-grouse," Western Values Project Executive Director Chris Saeger said in a statement. "It appears Secretary Zinke wants to scrap all the work done by Western communities, coalitions, sportsmen and women, wildlife managers, private landowners, and industry groups."

He added: "If the Governors have an audience with Secretary Zinke next week, they must use it to insist that Interior continue with the sage-grouse plans. We simply cannot afford to turn back the clock on sage-grouse conservation."

Zinke announced earlier this month that the Trump administration would review federal greater sage grouse conservation plans to determine if they are hindering energy production on public lands ([Greenwire](#), June 7).

A review panel is set to assess both federal and state-level efforts to protect the birds and possibly recommend significant changes to how they are managed.

The Interior and Agriculture departments finalized their greater sage grouse plans in 2015 — covering grouse habitat across 70 million acres in 10 Western states — including amendments and revisions to 98 Bureau of Land Management and Forest Service land-use plans.

Western state governors involved in the development of conservation efforts requested to meet with Zinke at next week's WGA meeting to discuss the review. The Interior Department has not said whether Zinke will meet with the officials ([E&E News PM](#), June 21).

The new campaign includes a 30-second ad that touts bipartisan efforts among Western governors to create the 2015 conservation plans, which avoided a decision by the Fish and Wildlife Service to list the sage grouse under the Endangered Species Act.

"Sage grouse are a success story, proof conservation strategies can be effective," a male narrator states in the spot as images of the mottled-brown bird appear on screen.

The ad continues: "Epic collaboration among Western governors protecting habitat, property rights and energy development. But now, Washington wants to tell the West what to do, and Secretary Zinke is putting the interests of federal lobbyists ahead of families and public lands. The West is winning, keeping sage grouse off the endangered species list. Tell Secretary Zinke, stand with the West, not Washington."

LOBBYING

Former GOP aides sign on to advocate for conservation group

Kevin Bogardus, E&E News reporter



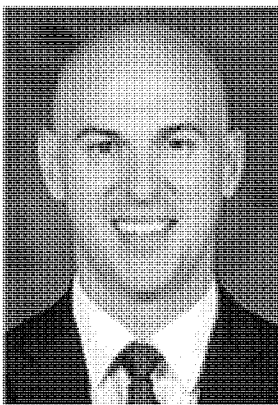
Published: Friday, June 23, 2017

Tony Essalih. [Essalih/LinkedIn](#)

The Nature Conservancy has hired former House aides to Texas Republicans to lobby on its behalf.

The environmental organization has brought on Cornerstone Government Affairs to lobby on funding for "conservation programs," "consideration of nature-based solutions in water resource projects" and "practical solutions to create a prosperous energy future," according to lobbying disclosure records released by the Senate this week.

Tony Essalih, former chief of staff to Rep. John Culberson (R-Texas); Tyler Nelson, once chief of staff to Rep. Pete Olson (R-Texas); and Justin Jordan, a former Texas political consultant, are Cornerstone's lobbyists working on behalf of the conservation group.



Tyler Nelson. [Nelson/LinkedIn](#)

The Nature Conservancy has spent \$230,000 on lobbying so far this year.

The group also has other lobby firms on its payroll, with staff members including ex-Republican aides, such as American Capitol Group's Tim Stewart — a former top staffer to the late Sen. Bob Bennett (R-Utah) — and BlueWater Strategies' McKie Campbell, former staff director of the Senate Energy and Natural Resources Committee for Sen. Lisa Murkowski (R-Alaska).

The Nature Conservancy is one of the few environmental groups to have met with U.S. EPA Administrator Scott Pruitt during the Trump administration's first weeks in office ([Greenwire](#), June 15).

PUBLIC LANDS

BLM advances lease sale near Dinosaur monument

[Jennifer Yachnin](#), E&E News reporter

Published: Friday, June 23, 2017



The Bureau of Land Management moved forward with plans to lease land near Dinosaur National Monument for oil and gas development. Mark Byzewski/Flickr

The Bureau of Land Management yesterday advanced plans to lease land near Dinosaur National Monument in northeast Utah despite National Park Service objections that development could negatively affect the 200,000-acre site.

According to a statement from BLM's Vernal and Price field offices, the agency is considering 64 parcels for inclusion in a December lease sale that includes nearly 67,000 acres.

The sites include parcels bordering Dinosaur and, according to NPS, would be visible from the visitor center and entrance road, as well as from other points within the monument.

"As we work in support of American energy independence, the BLM in Utah will move forward in a way that is consistent with national energy development policies," said BLM Utah spokeswoman Lisa Bryant.

"We will, of course, continue to carefully consider all nominated parcels to determine if they are appropriate for leasing and continue to conduct an environmental review before offering any leases for potential oil and gas development," Bryant said.

Conservationists have opposed the potential lease sale, arguing that energy extraction would affect the monument's dark night skies, as well as soundscapes and air quality.

"It is disappointing that BLM decided to ignore the concerns of the National Park Service at Dinosaur National Monument and include leases directly on the park border in their preferred alternative," said Nicholas Lund, senior manager of conservation programs for the National Parks Conservation Association.

"The environmental quality and visitor experience of visiting Dinosaur National Monument will be harmed if these parcels are developed," Lund said.

BLM will collect public comment on its environmental assessment through July 24. The agency is set to publish a notice of parcels included in the sale in September.

"We are currently in the leasing stage and are seeking public input to determine if these leases will be offered or not, and to determine if the stipulations are sufficient to protect the resources," said BLM Green River District Manager Gary Torres in a statement.

Conservationists had similarly objected to the sale of industry-nominated parcels near Zion National Park in southwest Utah from a scheduled September lease sale.

BLM pulled those parcels earlier this month, and the agency has yet to determine whether it will pull them permanently or eventually return them to auction (*E&E News PM*, June 2).

NATIONAL MONUMENTS

Tribes push back against Bears Ears cuts

Published: Friday, June 23, 2017

Tribal leaders and state politicians yesterday pushed back against Interior Secretary Ryan Zinke's proposed trimming of the newly formed Bears Ears National Monument.

At a discussion hosted by the University of Utah, panelists sought to dispel what they say is "misinformation and a false narrative" pushed by Utah politicians.

"The monument gives us an opportunity to apply our traditional knowledge in the management of the Bears Ears region. We are doing this for our children so they will have an opportunity to teach their kids the stories and their significance for the Navajo Nation," said Oljato chapter President James Adakai. "We hold reverence to the land, and we want that to remain forever."

Zinke has not yet specified which areas would be left out of the monument under his proposal. The Interior secretary earlier this week defended the cuts and his conversations with tribal leaders, saying tribes are split over the issue (*E&E News PM*, June 20).

But tribal leaders yesterday expressed frustration with Republicans in Congress who have challenged the monument's large size as well as tribal and federal jurisdiction under the Antiquities Act.

"This is our homeland, and we will utilize every law at our disposal to protect it. In this case, it's the Antiquities Act," said Arizona state Rep. Eric Descheenie (D) (Brian Maffly, *Salt Lake Tribune*, June 22). — NS

OCEANS

Federal panel moves to protect some corals, waits on others

Published: Friday, June 23, 2017

A federal panel yesterday offered new protections to deep-sea corals in the Atlantic Oceans but stopped short of protecting others so it can gather more information first.

The proposals from the New England Fishery Management Council focus on corals in the Gulf of Maine and south of Georges Bank off the coast of Massachusetts.

"The goal is to protect as much coral as you can while minimizing impact on various industries that are fishing near the corals," said John Bullard, a regional administrator for the National Marine Fisheries Service and a member of the fishery council.

The proposals, which have been debated by environmentalists and fishing groups, need to be approved by the federal Department of Commerce.

The committee decided to hold off on voting on plans for protecting coral south of Georges Bank, saying it needs more updated fishery data first (Patrick Whittle, *AP/San Francisco Chronicle*, June 22). — **CS**

INVASIVE SPECIES

Deadly fire ants float en masse after Tropical Storm Cindy

Published: Friday, June 23, 2017

Alabama officials are warning residents to watch out for floating masses of fire ants in the wake of flooding caused by Tropical Storm Cindy.

Fire ants, which spread by accident to Alabama from South America in the 1930s, are known for their aggression and painful bite, and the insects are just as dangerous in wet conditions as they are in dry conditions, Alabama officials said.

As floodwaters rise, the invasive ants cling together with their legs and feet, forming a raft that can stay afloat for up to 12 days, said University of Arkansas professor Kelly Loftin.

"Those ants that are trapped under the water will collect bubbles to break that surface tension and raise up the raft so it can float," Loftin said. "They move around so that no individual remains submerged in the water for long" (Peter Holley, *Washington Post*, June 22). — **NS**

MINING

Electric car sales boost lithium manufacturers

Published: Friday, June 23, 2017

Surging lithium demand as a result of increasing electric car sales is boosting the share prices of companies linked to mining and manufacturing the light metal.

Global X Lithium & Battery Tech, an exchange-traded fund for some of the world's largest companies linked to lithium, has increased more than 60 percent in the last 18 months.

"The acceleration in technology, including electric vehicles, could push new metals a lot higher," said Eily Ong, an analyst at Bloomberg Intelligence.

Electric car sales last year skyrocketed to 2 million, and mainstream carmakers, including Renault-Nissan and Volkswagen, are pushing for new emissions-free models.

That demand is feeding lithium-mining companies, which are scrambling to open new mines to keep up, experts say (Jonathan Tirone, *Bloomberg*, June 22). — **NS**

WILDFIRES

Searing heat wave complicates firefighting efforts

Published: Friday, June 23, 2017

Extreme heat in the southwest U.S. created tough conditions for firefighters battling a series of wildfires this week, including one in Arizona that has destroyed four homes.

Temperatures rose to nearly 120 degrees in parts of Arizona, California and Nevada.

In California, two firefighters were treated for injuries related to the heat as they battled a blaze in the San Bernardino Mountains. In New Mexico, a brush fire destroyed sheds and vehicles, sending two residents and a firefighter to the hospital. And in Arizona, about 100 firefighters fought a 2-square-mile blaze in Sonoita, thought to be ignited by lightning.

"The heat is a major factor not only for us getting overheated but heat will rise up our embers, which will cause more fires to pick up," said Joseph De Wolf, chief of the Sonoita-Elgin Fire District.

Across Arizona, firefighters are working on around 30 fires, spreading resources thin.

Another fire in Utah, touched off by someone using a torch to burn weeds, forced 700 people to evacuate and shut down part of a state highway (Galvan/Wang, [ABC News](#), June 21). — **SM**

POLITICS

Mayors to address climate change at annual meeting

Published: Friday, June 23, 2017

More than 250 U.S. mayors meet in Miami Beach, Fla., today to kick off the annual national mayoral conference. Climate change is on the top of the agenda.

With many cities pushing back against the Trump administration's environmental and climate policies, the mayors plan to discuss how to reduce carbon emissions and potential collaboration.

Other top issues include protecting immigrant families — another Trump rebuttal — and curbing gun violence.

Top speakers include former New York City Mayor Michael Bloomberg, U.S. Labor Secretary Alex Acosta and U.S. Veterans Affairs Secretary David Shulkin.

The mayors vote Monday on policy resolutions to send to Washington lawmakers ([AP/Fort Worth Star-Telegram](#), June 23). — **NB**

CLIMATEWIRE

AN E&E NEWS PUBLICATION

CLIMATEWIRE — Mon., June 26, 2017



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1. PEOPLE:

Meet Jerry Brown, from 'Gov. Moonbeam' to climate beacon

CHENGDU, China — California Gov. Jerry Brown, leader of the world's sixth-largest economy and the longest-serving governor in state history, is making climate change a signature focus of his final term. And he has made it his mission to jolt the world into action with a combination of tough talk and distinctly religious fervor.

TOP STORIES

2. RENEWABLE ENERGY:

Scientists search a gorge for the secrets of wind

3. INTERIOR:

Is Zinke cherry-picking data to boost drilling?

LAW

4. COURTS:

Indian fishermen lose suit against coal lender

STATES

5. OHIO:

Utilities face opposition to funding plan

BUSINESS

6. TRANSPORTATION:

Rare electric school buses slowly gain traction

7. RENEWABLES:

Investment strong despite Trump's support for fossil fuels

INTERNATIONAL

8. CHINA:

High-stakes carbon trading market set to launch

9. PARIS AGREEMENT:

U.S. withdrawal could mean submersion for some islands

COMMUNICATIONS

10. EPA:

Ex-staffer: Climate website removal 'declaration of war'

ENERGYWIRE — Mon., June 26, 2017



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Wind works its way toward baseload power in the Northwest

As officials debate the meaning of "baseload," two wind operators in the Pacific Northwest are demonstrating how wind power can be as reliable as a coal.

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'This ain't working': Study authors see trouble in merchant sector

3. NUCLEAR:

Westinghouse parent's finances erode ahead of key U.S. deadlines

FEDERAL AGENCIES

4. EPA:

Journalists chide Pruitt for keeping records secret

ELECTRICITY

5. SOLAR:

Tariffs would slash demand in half — report

OIL AND GAS

6. REGULATION:

Ill. gears up for fight over first fracking well

7. ADVOCACY:

Top energy official urges enviros to stop fracking rhetoric

8. OIL MARKETS:

Gas prices hit new lows as U.S. shale oil glut confounds OPEC

9. PEOPLE:

Sunoco CEO to retire

10. REGULATION:

Wyo. agency will track failed oil and gas operators

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Message

From: Mazakas, Pam [Mazakas.Pam@epa.gov]
Sent: 8/9/2019 2:51:20 PM
To: Koslow, Karin [Koslow.Karin@epa.gov]
Subject: RE: DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy

Thanks for sharing.

Thanks,

Pam

Pamela J. Mazakas
Deputy Director
Office of Criminal Enforcement, Forensics, and Training
U.S. EPA
202/564-2480

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From: Koslow, Karin <Koslow.Karin@epa.gov>
Sent: Friday, August 09, 2019 10:39 AM
To: Leff, Karin <Leff.Karin@epa.gov>; Hindin, David <Hindin.David@epa.gov>; Dombrowski, John <Dombrowski.John@epa.gov>; Mazakas, Pam <Mazakas.Pam@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>
Subject: FW: DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy

Also thought you would be interested -

Karin Koslow
Deputy Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Desk: (202) 564-0171
Cell: (202) 716-5645
WJC South Room 3142D

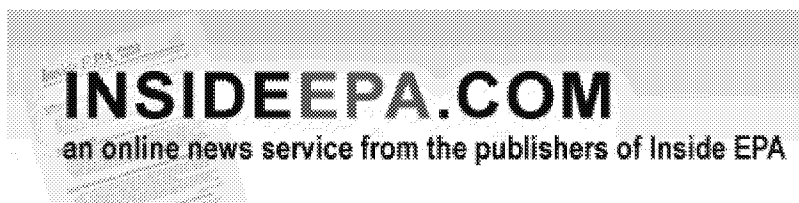
From: Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Sent: Friday, August 09, 2019 10:16 AM
To: Regional Counsels and Deputies <Regional_Counsels_and_Deputies@epa.gov>; ECAD Directors and Deputies <ECAD_Directors_and_Deputies@epa.gov>
Cc: Koslow, Karin <Koslow.Karin@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>
Subject: FW: DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy

RC and ECAD colleagues:

I wanted to make you aware of this story on SEPs from InsideEPA, as you may get similar inquiries from outside parties or the press. FYI, our response to InsideEPA was the following:

EPA has not changed its 2015 policy regarding supplemental environmental projects (SEPs) in settlement agreements. A SEP is a beneficial environmental project or activity to which a party agrees that goes beyond what could legally be required in order for the party to return to compliance. On November 7, 2018, former Attorney General Jeff Sessions issued a Department of Justice (DOJ) policy entitled *Principles and Procedures for Civil Consent Decrees and Settlement Agreements with State and Local Governmental Entities* – see <https://www.justice.gov/opa/pr/justice-department-releases-memorandum-litigation-guidelines-civil-consent-decrees-and>. As a policy matter, DOJ requires that judicial settlements with a state or local entity that include SEPs must first be reviewed and approved by the Associate Attorney General.

Larry



DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy

August 08, 2019

AUSTIN, TX -- The Department of Justice (DOJ) is rejecting supplemental environmental projects (SEPs) in settlements it is negotiating with local governmental agencies, a move that appears to undercut department policy that says it will approve the projects as part of deals provided they comply with EPA's SEP policy, attorneys say.

The rejections have begun being communicated over the past month, according to one industry attorney familiar with negotiations in several clean water settlements between DOJ and local governments, coming after years of negotiations where DOJ officials indicated the projects were likely to be approved.

A second source, industry attorney Nathan Vassar, told an Aug. 1 session of the Texas Environmental Superconference here that if attorneys have a SEP to propose as part of a federal settlement, "it will take some real convincing because apparently the ongoing discussions -- and this is more at DOJ than it is at EPA -- are that, 'We're not going to allow SEPs as part of the enforcement protocol.'"

Vassar said this marks a change from past practice, when Trump officials told attorneys representing municipalities that their broader efforts to limit the use of SEPs would not generally apply in settlements involving local government entities. "We were told on several occasions, 'On municipal enforcement, if you like your SEP, you can keep your SEP'," he said.

However, that is no longer the case, Vassar said. "We learned just this week, it may be news to some . . . A SEP as a part of an enforcement mechanism is not going to be pursued as a part of this administration."

A DOJ spokesman denies there has been a policy change, saying all department guidance is being followed and declining to comment on whether new guidance has been issued.

DOJ's "Environment and Natural Resources Division [(ENRD)] is following all current [DOJ] memoranda, including those issued by the Division itself and by the Attorney General," the spokesman says.

The spokesman declined to clarify whether that means SEPs can be approved or if there is a new document prohibiting them.

An EPA spokesman says the agency has not changed its 2015 policy regarding use of SEPs in settlement agreements. But the spokesman noted that former Attorney General Jeff Sessions, in a 2018 policy, had required that "judicial settlements with a state or local entity that include SEPs must first be reviewed and approved by the Associate Attorney General."

The new prohibition on SEPs renews focus on the issue, which has raised concerns in the past. The concern stemmed initially from Sessions' June 2017 memo banning settlements that included payments to third parties. Sessions opposed such payments because the parties were "neither victims nor parties to the lawsuits."

Some GOP lawmakers also complained that such settlements amount to "sweetheart deals" for environmental groups that benefitted from SEPs.

But many attorneys warned at the time that the prohibition would drastically impair their ability to settle EPA-related cases, and they strongly defended SEPs as providing a major incentive for environmental settlements with local both governments and private industry.

For example, some municipal officials were concerned that any limitation on the use of SEPs would hamper their efforts to expand the use of SEPs to offset stipulated penalties.

EPA Policy

After the uproar, DOJ's then-acting ENRD chief Jeff Woods in a January 2018 memo clarified exceptions to the payment ban, including for projects that comply with EPA's 2015 SEP policy.

Then, Sessions in a November 2018 policy wrote that settlements with municipal entities that included SEPs had to win approval from the associate attorney general for ENRD.

While the policy barring payments to third parties has been implemented, it faces some legal uncertainty as a federal court in Washington, D.C., has so far declined a DOJ request to drop a SEP from an already approved settlement with Harley Davidson -- more than two years after the request was first made.

Now, industry sources say DOJ is now rejecting approvals of municipal SEPs, raising questions about how to proceed.

"What we are starting to see happen is where we proposed SEPs we thought would be OK, and that everyone indicated were OK, but of course did not have final approval, are now getting rejected," the first industry source says.

DOJ is communicating to these attorneys that the settlements will not be approved if they contain the SEPs, but the source says it is unclear who made the change and why. No one at DOJ "has cited new documents to us," the source says.

It is also unclear whether any of the settling parties will seek to challenge the rejection of the SEPs. "We have to debate, 'Ok do you challenge it and go to higher levels to try to convince [DOJ] why you should be able to do this, or do you just say, 'OK, we're going to put more money in the penalty?'"

These discussions are "just happening now . . . we are engaged in thinking about that right now." The answer will be based on how badly the settling party wants to do the SEP "or whether it can get the case done, pay more money and move on," the source adds. "We have to think about each case and whether it is worth having that fight."

This source has "not had any direct discussions with someone at DOJ or EPA other than being told they are not accepting that SEP."

The attorney notes that including SEPs in local government settlements has "been very valuable" and "helped us get to agreements in situations where municipalities feel very strongly that if they pay money it should go toward the community, and hopefully go to improving water quality for the community, and not get sent to D.C. to go to some federal agency."

City councils are more apt to approve settlements if they include incentives such as SEPs that require tree planting or repairing a sewer line, the source explains. However, it is also unclear, the source notes, whether dropping a SEP at this stage will tank the overarching settlement and result in litigation.

The industry source says when the policies first came out, it appeared they would not restrict SEPs by municipalities unless the governments were paying contractors to do the work, rather than having their own employees do so.

Now, the source says, even if a city employee were to plant trees on private property as part of a SEP, that appears to be prohibited as well, because DOJ "would say you are providing value to that property owner, and that is something you cannot do."

The source adds that if all SEPs are effectively banned, that would "be really unfortunate" because "they helped make it easier to reach agreements and provided real environmental benefits to communities."

The source says it is difficult to identify the universe of threatened SEPs because the Trump DOJ has not initiated many cases, so a lot of the cases being negotiated were started under the Obama administration, continued into Trump "and now we're being told we can't do it."

The source says the policy is less problematic if "it is only the policy for the next year and a half." But if it "lasts into another administration," then it would "affect a lot of cases" and have a "substantial" impact on settlements.

The last case this source was involved with that had a SEP -- which required a city to improve a stream -- was approved by a court in early 2018. -- *Dawn Reeves* (dreeves@iwpnews.com) & *Lee Logan* (llogan@iwpnews.com)

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220946

Appointment

From: Koslow, Karin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D00AA4F4FEAD4A3FA02F0CAFE57ED221-KOSLOW, KARIN]
Sent: 7/17/2019 6:35:40 PM
To: Amy Porter (Porter.Amy@epa.gov) [Porter.Amy@epa.gov]; Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]; Rosemarie Kelley (Kelley.Rosemarie@epa.gov) [Kelley.Rosemarie@epa.gov]; Buterbaugh, Kristin [Buterbaugh.Kristin@epa.gov]
Subject: Quick strategy discussion re: recommendation for next steps vis a vis DOJ Draft SEP memo
Location: Rosemarie's office
Start: 7/17/2019 8:00:00 PM
End: 7/17/2019 8:30:00 PM
Show Time As: Tentative

Hoping we can get together this afternoon to talk about options we want to present to Susan and Larry tomorrow re: a response to the draft memo. We won't have a substantive focused discussion re: the content of the memo, but rather want to talk about process - in terms of the form and scope of our response.

If this time doesn't work, we could try for 9 a.m. tomorrow (Thursday).

Thanks,
Karin

Message

From: Koslow, Karin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D00AA4F4FEAD4A3FA02F0CAFE57ED221-KOSLOW, KARIN]
Sent: 8/8/2019 6:28:01 PM
To: Saenz, Diana [Saenz.Diana@epa.gov]; Buterbaugh, Kristin [Buterbaugh.Kristin@epa.gov]
Subject: RE: Talking points for Susan meeting with Jeff Clark/ R2 UST case - Nassau County - SEP/IR

Thanks = I'll work with what you've sent me.

Karin Koslow
Deputy Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Desk: (202) 564-0171
Cell: (202) 716-5645
WJC South Room 3142D

From: Saenz, Diana <Saenz.Diana@epa.gov>
Sent: Thursday, August 08, 2019 1:51 PM
To: Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>
Cc: Koslow, Karin <Koslow.Karin@epa.gov>
Subject: Talking points for Susan meeting with Jeff Clark/ R2 UST case - Nassau County - SEP/IR

Here are the talking points R2 developed for Susan in preparation for her meeting with Jeff Clark. I think this can be provided as a background piece.

Ex. 5 AC/DP

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

I apologize for sending this long piece to you, but this was as quick a turnaround I could do up to this point. I can pick this up after 3:00, if needed.

Kristin – if you have time to review and consider, please do.

Thank you,
Diana

Diana J. Saenz
Associate Director
Waste and Chemical Enforcement Division
Office of Civil Enforcement/ U.S. EPA
1200 Pennsylvania Ave., N.W.
Mailcode 2249A
Washington, D.C. 20460
Phone: (202) 564-4209
Fax: (202) 564-0022
Saenz.Diana@epa.gov

Message

From: Koslow, Karin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D00AA4F4FEAD4A3FA02F0CAFE57ED221-KOSLOW, KARIN]
Sent: 7/17/2019 2:41:15 PM
To: Johnson, Catherine M. [johnson.catherinem@epa.gov]
CC: Buterbaugh, Kristin [Buterbaugh.Kristin@epa.gov]
Subject: Another OCE Agenda item

Hi Catherine – please add as the last agenda item:

DOJ Draft SEP Memo (no paper)

Thanks,
Karin

Karin Koslow
Deputy Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Desk: (202) 564-0171
Cell: (202) 716-5645
WJC South Room 3142D

Message

From: Koslow, Karin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D00AA4F4FEAD4A3FA02F0CAFE57ED221-KOSLOW, KARIN]
Sent: 7/30/2019 2:33:25 PM
To: Buterbaugh, Kristin [Buterbaugh.Kristin@epa.gov]
Subject: Fwd: Draft SEPs State/Local Memo
Attachments: SEP memo to Claire.docx; ATT00001.htm

FYI

Karin Koslow
Deputy Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
202-564-0171

Begin forwarded message:

From: "Bodine, Susan" <bodine.susan@epa.gov>
Date: July 30, 2019 at 10:24:35 AM EDT
To: "Starfield, Lawrence" <Starfield.Lawrence@epa.gov>, "Kelley, Rosemarie" <Kelley.Rosemarie@epa.gov>
Cc: "Fogarty, Johnpc" <Fogarty.Johnpc@epa.gov>, "Koslow, Karin" <Koslow.Karin@epa.gov>, "Makepeace, Caroline" <Makepeace.Caroline@epa.gov>, "Porter, Amy" <Porter.Amy@epa.gov>
Subject: RE: Draft SEPs State/Local Memo

Ex. 5 AC/DP

See attached. Comments welcome.

Susan

From: Starfield, Lawrence
Sent: Monday, July 15, 2019 8:27 AM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Cc: Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>
Subject: Re: Draft SEPs State/Local Memo

PRIVILEGED AND CONFIDENTIAL

Rosemarie,

Let's do the best we can.

Ex. 5 AC/DP

Ex. 5 AC/DP

Lots to discuss.

Larry

Sent from my iPhone

On Jul 15, 2019, at 7:40 AM, Kelley, Rosemarie <Kelley.Rosemarie@epa.gov> wrote:

Larry -

Given that Caroline Makepeace is out through next Friday and John is tied up with Limetree for the next couple of days (and Amy is out until Thursday), Karin and I will talk this morning about how we will develop a response and when we can get it done.

Rosemarie

Rosemarie Kelley, Director
Office of Civil Enforcement
OECA

From: Fogarty, Johnpc
Sent: Monday, July 15, 2019 7:24:32 AM
To: Starfield, Lawrence
Cc: Kelley, Rosemarie; Koslow, Karin; Makepeace, Caroline
Subject: Re: Draft SEPs State/Local Memo

I'm in all day negotiations today and tomorrow (Limetree) and won't have a chance to look at this until mid-week, unfortunately.

Sent from my iPhone

On Jul 14, 2019, at 6:48 PM, Starfield, Lawrence <Starfield.Lawrence@epa.gov> wrote:

Here is Jeff Clark's draft memo on SEPs. I haven't read it yet, but wanted to get it to you ASAP. Please let Susan and I know what you think and what next steps you recommend. I read it tonight or in the morning.

Thanks.

Larry

From: Bodine, Susan
Sent: Sunday, July 14, 2019 6:06 PM
To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>
Subject: Fwd: Draft SEPs State/Local Memo

Sent from my iPad

Begin forwarded message:

From: "Clark, Jeffrey (ENRD)" <jbc1@usdoj.gov>
Date: July 14, 2019 at 4:38:27 PM EDT
To: "bodine.susan@epa.gov" <bodine.susan@epa.gov>
Cc: "Brightbill, Jonathan (ENRD)" <Jonathan.Brightbill@usdoj.gov>, "Gelber, Bruce (ENRD)" <Bruce.Gelber@usdoj.gov>
Subject: Draft SEPs State/Local Memo

Susan, please see the attached.

Ex. 5 Attorney Client (AC)

Jeff

<ENRD State and Local SEP Memo External Draft 1.docx>

Message

From: Koslow, Karin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D00AA4F4FEAD4A3FA02F0CAFE57ED221-KOSLOW, KARIN]
Sent: 7/17/2019 2:25:43 PM
To: Amy Porter (Porter.Amy@epa.gov) [Porter.Amy@epa.gov]
CC: Rosemarie Kelley (Kelley.Rosemarie@epa.gov) [Kelley.Rosemarie@epa.gov]
Subject: HIGH priority - Draft SEPs State/Local Memo
Attachments: ENRD State and Local SEP Memo External Draft 1.docx

Importance: High

Amy – probably one of the top priorities for you to know about is preparing for a discussion tomorrow during our OCE weekly about Jeff Clark’s memo. You are on an email from Larry sent Monday at 8:27 sharing his initial reactions.

Ex. 5 AC/DP

We have not yet even discussed the memo internally (OCE). John’s been involved in **Ex. 7(A)** 100% of the time this week, Caroline is on vacation and we haven’t shared this with anyone else yet in OCE – we are treating it as close-hold until we can confirm differently with Larry.

Thanks,
Karin

Karin Koslow
Deputy Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Desk: (202) 564-0171
Cell: (202) 716-5645
WJC South Room 3142D

From: Starfield, Lawrence
Sent: Sunday, July 14, 2019 6:49 PM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: FW: Draft SEPs State/Local Memo

Here is Jeff Clark’s draft memo on SEPs. I haven’t read it yet, but wanted to get it to you ASAP. Please let Susan and I know what you think and what next steps you recommend. I read it tonight or in the morning.

Thanks.

Larry

From: Bodine, Susan
Sent: Sunday, July 14, 2019 6:06 PM

To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>

Subject: Fwd: Draft SEPs State/Local Memo

Sent from my iPad

Begin forwarded message:

From: "Clark, Jeffrey (ENRD)" <jbc1@usdoj.gov>

Date: July 14, 2019 at 4:38:27 PM EDT

To: "bodine.susan@epa.gov" <bodine.susan@epa.gov>

Cc: "Brightbill, Jonathan (ENRD)" <Jonathan.Brightbill@usdoj.gov>, "Gelber, Bruce (ENRD)" <Bruce.Gelber@usdoj.gov>

Subject: Draft SEPs State/Local Memo

Susan, please see the attached.

Ex. 5 Attorney Client (AC)

Jeff

Message

From: Koslow, Karin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D00AA4F4FEAD4A3FA02F0CAFE57ED221-KOSLOW, KARIN]
Sent: 8/6/2019 12:04:56 PM
To: Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]; Amy Porter (Porter.Amy@epa.gov) [Porter.Amy@epa.gov]; Makepeace, Caroline [Makepeace.Caroline@epa.gov]
CC: Rosemarie Kelley (Kelley.Rosemarie@epa.gov) [Kelley.Rosemarie@epa.gov]
Subject: Susan's email re: Draft SEPs State/Local Memo
Attachments: DRAFT SEP memo to Claire .docx

All – thanks for the extra-efforts you made to provide additional information/input to Susan on a very short turn-around, when your available time was already very limited.

Attached is what Susan sent to Jeff. We'll find out from Larry on Tuesday whether there's been any additional communication on the topic since this email was sent by Susan last week.

Thanks,
Karin

Karin Koslow
Deputy Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Desk: (202) 564-0171
Cell: (202) 716-5645
WJC South Room 3142D

From: Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Sent: Wednesday, July 31, 2019 5:51 PM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>
Subject: FW: Draft SEPs State/Local Memo

FYI.

From: Bodine, Susan <bodine.susan@epa.gov>
Sent: Wednesday, July 31, 2019 5:39 PM
To: Clark, Jeffrey (ENRD) <jbc1@usdoj.gov>
Cc: Brightbill, Jonathan (ENRD) <Jonathan.Brightbill@usdoj.gov>; bruce.gelber@usdoj.gov; Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Subject: RE: Draft SEPs State/Local Memo

Jeff,

Attached is a draft memo that I propose to send to Claire setting forth my views on the issue.

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Susan

From: Clark, Jeffrey (ENRD) <jbc1@usdoj.gov>
Sent: Sunday, July 14, 2019 4:38 PM
To: Bodine, Susan <bodine.susan@epa.gov>
Cc: Brightbill, Jonathan (ENRD) <Jonathan.Brightbill@usdoj.gov>; bruce.gelber@usdoj.gov
Subject: Draft SEPs State/Local Memo

Susan, please see the attached.

Ex. 5 Attorney Client (AC)

Jeff

Message

From: Koslow, Karin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D00AA4F4FEAD4A3FA02F0CAFE57ED221-KOSLOW, KARIN]
Sent: 7/29/2019 5:05:41 PM
To: Buterbaugh, Kristin [Buterbaugh.Kristin@epa.gov]; Amy Porter (Porter.Amy@epa.gov) [Porter.Amy@epa.gov]
Subject: Close hold - do not distribute - Draft SEPs State/Local Memo
Attachments: ENRD State and Local SEP Memo External Draft 1.docx

This is JClark's draft SEP memo. Larry originally sent it to Rosemarie, Caroline, John and me. Larry was okay with us sharing this with a few others, as needed, so I wanted you both to have this.

At this point, I do not plan to share it with anyone else. After we have more clarity on next steps, we may decide to share with Div Directors.

Thanks,
Karin

Karin Koslow
Deputy Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Desk: (202) 564-0171
Cell: (202) 716-5645
WJC South Room 3142D

Message

From: Koslow, Karin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D00AA4F4FEAD4A3FA02F0CAFE57ED221-KOSLOW, KARIN]
Sent: 8/23/2019 5:53:48 PM
To: Hull, George [Hull.George@epa.gov]
CC: Egan, Patrick [egan.patrick@epa.gov]
Subject: RE: desk statement

Ex. 5 AC/DP

Have we had any press inquiries?

Karin Koslow
Deputy Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Desk: (202) 564-0171
Cell: **Ex. 6**
WJC South Room 3142D

From: Hull, George <Hull.George@epa.gov>
Sent: Friday, August 23, 2019 11:51 AM
To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>
Cc: Egan, Patrick <egan.patrick@epa.gov>
Subject: RE: desk statement

Susan, Larry, Rosemarie and Karin,

Ex. 5 Deliberative Process (DP)

Message

From: Makepeace.Caroline@epa.gov [Makepeace.Caroline@epa.gov]
Sent: 4/29/2019 12:26:53 PM
To: Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]
CC: Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Porter, Amy [Porter.Amy@epa.gov]; Koslow, Karin [Koslow.Karin@epa.gov]
Subject: Re: SEP meeting with DOJ

Perfect! Was going to say suggest you go ahead, since

Ex. 6 Personal Privacy (PP)

Ex. 6 Personal Privacy (PP)

A soundtrack for tightening up

Sent from my iPhone

On Apr 29, 2019, at 8:18 AM, Fogarty, Johnpc <Fogarty.Johnpc@epa.gov> wrote:

Ex. 5 AC/DP

Caroline, I'll take a first cut and then hand it to you by 9 am.

From: Kelley, Rosemarie
Sent: Sunday, April 28, 2019 8:24 PM
To: Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Cc: Porter, Amy <Porter.Amy@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>
Subject: Fw: SEP meeting with DOJ

John, Caroline --

This paper needs your review/revisions.

Ex. 5 AC/DP

Rosemarie

From: Starfield, Lawrence
Sent: Sunday, April 28, 2019 6:38 PM
To: Bodine, Susan
Cc: Kelley, Rosemarie; Fogarty, Johnpc; Makepeace, Caroline
Subject: SEP meeting with DOJ

Susan,

Ex. 5 AC/DP

For your consideration.

Larry

This message is CONFIDENTIAL, and may contain legally privileged information. If you are not the intended recipient, or believe you received this communication in error, please delete it immediately, do not copy, and notify the sender. Thank you.

Appointment

From: Swanson, Amy [Swanson.Amy@epa.gov]
Sent: 3/12/2019 6:40:25 PM
To: Swanson, Amy [Swanson.Amy@epa.gov]; Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: Canceled: SEP Prep
Location: I'll phone your office

Start: 4/11/2019 6:00:00 PM
End: 4/11/2019 6:30:00 PM
Show Time As: Free

Importance: High

Hi Caroline. Amy Porter informed me yesterday that you are wrangling with DOJ regarding the future role and scope of SEPs in settlements. Since things are a bit up in the air, I am cancelling your SEP presentation on April 18th and our planning call today. Just give me a shout when the issues with DOJ have been resolved and you are ready to proceed with your SEP presentation. Thank you, and good luck, Amy Swanson.

Message

From: Makepeace.Caroline@epa.gov [Makepeace.Caroline@epa.gov]
Sent: 8/9/2019 6:31:01 PM
To: Porter, Amy [Porter.Amy@epa.gov]
Subject: Re: TO DO ITEM: Administrator Hearing in September. MONDAY 8/5 deadline re topics for issue papers, WED 8/14 deadline for updated/new papers

Ex. 5 Deliberative Process (DP)

Sent from my iPhone

On Aug 9, 2019, at 2:27 PM, Porter, Amy <Porter.Amy@epa.gov> wrote:

So now that the IE article is out there, can you please think about a proposed construct for an issue paper around SEPs so we can put it in front of Rosemarie as soon as possible next week? Would we just want to stick to the messaging around what we told the IE reporter?

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Wednesday, August 07, 2019 10:32 AM
To: Porter, Amy <Porter.Amy@epa.gov>
Subject: Re: TO DO ITEM: Administrator Hearing in September. MONDAY 8/5 deadline re topics for issue papers, WED 8/14 deadline for updated/new papers

Ex. 5 AC/AWP/DP

Sent from my iPhone

On Aug 7, 2019, at 8:17 AM, Porter, Amy <Porter.Amy@epa.gov> wrote:

Hi – We need to think about how we would write a SEP issue paper. I think it's coming

Ex. 5 AC/DP

Thank you!
Amy

From: Holmes, Carol <Holmes.Carol@epa.gov>
Sent: Thursday, August 01, 2019 5:25 PM
To: OECA-OCE-MANAGERS <OECAOCEMANAGERS@epa.gov>
Subject: TO DO ITEM: Administrator Hearing in September. MONDAY 8/5 deadline re topics for issue papers, WED 8/14 deadline for updated/new papers
Importance: High

Hi Everyone – sorry for the Thursday afternoon in August with short Monday August 5th deadline, but you know how OCIR is....sigh. The good news is that we have almost 2 weeks to do any substantive drafting.

Per Caroline's email below, the Administrator is testifying in September, so they want to update the batch of briefing papers that are used when he testifies. We have two critical asks: (1) are there any existing issue papers that can be struck, or any we need to add (Monday, August 5th deadline), and (2) update existing papers that are stale and draft new ones (Wednesday August 14th deadline).

The existing OECA issue papers are (I've added some parentheticals):

1. Criminal Enforcement – New Cases
2. Criminal Enforcement – Number of Agents
3. Drinking Water Enforcement (*need to update, if we keep?*)
4. Enforcement Activity Annual Results
5. FY20 OECA Enforcement and Compliance Programs
6. Information Requests (*is this still a "hot" topic or can we strike this paper?*)
7. Inspection Numbers
8. Lead Enforcement Activity
9. Notice of Judicial Referrals (*is this still a "hot" topic or can we strike this paper?*)
10. PFAS Enforcement Activity (need to update)
11. Transition National Enforcement Initiatives to National Compliance Initiatives (*OC should update this to reflect final NCIs, with our input*)
12. Using Superfund Enforcement Tools to Promote Cleanup and Redevelopment
13. Key OECA Program Changes (needs a lot of updating based on other issue papers)

OCE DEADLINES:

Monday August 5th COB – please let me, Amy and Karin know if you want to draft a new issue paper, or strike an existing one.

Wednesday August 14th COB – final papers, approved through Rosemarie or Karin, to me. Please use your Generals that week to get final approval by Rosemarie/Karin.

Attached are:

1. OECA Final.zip.. Zip file containing all the latest versions of the OECA issue papers last updated this Spring. In other words, the starting point for revisions/updates.
2. Program Office Fact Sheet Format. The latest fact sheet format.

3. 01-01-2019-TOC Program Fact Sheets.... A list of all the issue papers provided by all the program offices. *Let me know if you are interested in reviewing any issue papers of another program office and I'll let OAP know they should request a copy of the latest version (which may be changing of course). I already have all of OLEM's if anyone wants those.*

Thanks, Carol

May contain sensitive communication for internal deliberations only, attorney-client communication, attorney work product, and/or enforcement sensitive information. Do not distribute outside the U.S. Government.

Carol S. Holmes
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement (MC 2241A)
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460
Phone (202) 564-8709

From: Emmerson, Caroline <Emmerson.Caroline@epa.gov>
Sent: Thursday, August 1, 2019 4:54 PM
To: Holmes, Carol <Holmes.Carol@epa.gov>; Kadish, Rochele <Kadish.Rochele@epa.gov>; Cavanaugh, Charles <Cavanaugh.Charles@epa.gov>; Fisher, Mike <Fisher.Mike@epa.gov>; DeLeon, Rafael <DeLeon.Rafael@epa.gov>; Mackey, Cyndy <Mackey.Cyndy@epa.gov>; Leff, Karin <Leff.Karin@epa.gov>; Muller, Marie <MULLER.MARIE@EPA.GOV>
Cc: Gardner, Monica <Gardner.Monica@epa.gov>; Patterson, Kenneth <Patterson.Kenneth@epa.gov>; Rae, Sarah <Rae.Sarah@epa.gov>; Spina, Providence <Spina.Providence@epa.gov>; Vizard, Elizabeth <Vizard.Elizabeth@epa.gov>; Swack, David <Swack.David@epa.gov>; Warren, JohnM <Warren.JohnM@epa.gov>; Dalzell, Sally <Dalzell.Sally@epa.gov>; Azad, Ava <Azad.Ava@epa.gov>; Folkemer, Nathaniel <Folkemer.Nathaniel@epa.gov>; Ingram, Amir <Ingram.Amir@epa.gov>
Subject: Administrator Hearing: issue papers- Due August 15th
Importance: High

All,

The Administrator will be testifying before the House Science, Space and Technology Committee in September. OCIR expects that this will be a general oversight hearing to cover a variety of potential topics.

OCIR is asking for any updates/deletions/additions to the attached materials from the spring budget hearings:

- Issue paper table of contents (TOC) (list of OECA issues papers below);
- OECA Issue papers:
 - Criminal Enforcement – New Cases
 - Criminal Enforcement – Number of Agents

Drinking Water Enforcement
Enforcement Activity Annual Results
FY20 OECA Enforcement and Compliance Programs
Information Requests
Inspection Numbers
Lead Enforcement Activity
Notice of Judicial Referrals
PFAS Enforcement Activity
Transition National Enforcement Initiatives to National
Compliance Initiatives
Using Superfund Enforcement Tools to Promote Cleanup and
Redevelopment
Key OECA Program Changes

Also attached are:

- OLEM issue papers (for your awareness, **note: we are not taking comment on these**)
- Template for new issue papers

Due Dates:

- By Monday (8/5) at noon or sooner: Please let me know if you have any recommended additions or deletions to the OECA TOC list.
- By Noon, Thursday (8/15), please provide any new issue papers and any updates/deletions/additions to the attached issue papers.

Please note the following:

Site fact sheets: OCIR will be requesting site issue papers for committee members from the regions and they may ask us for additional info too. We will keep you posted.

Other AAship papers: please let me know if you would like to see any particular issue papers from other AAships, understanding that they might be making changes/additions/deletions.

We greatly appreciate your help in getting these papers in final form for clearance by our AA.

Thanks and please let me know any questions.

Caroline

*Caroline Emmerson, Director, Policy and Legislative Coordination Division/OAP/OECA
U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington,
DC 20460/ 202-564-1716 (office), emmerson.caroline@epa.gov*

This message is CONFIDENTIAL, and may contain legally privileged information. If you are not the intended recipient, or believe you received this communication in error, please delete it immediately, do not copy, and notify the sender. Thank you.

<OECA FINAL.zip>

<04-01-2019 - TOC Program Fact Sheets - Budget Hearings_ (002).docx>

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Message

From: Vinch, James [Vinch.James@epa.gov]
Sent: 7/22/2019 12:51:48 PM
To: Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: Ex. 5 AC/AWP/DP, 7(A)
Attachments: ADEM General SEP Guidance 2009.pdf

Hi Caroline,

Ex. 5 AC/AWP/DP

Jim Vinch, Senior Attorney
U.S.EPA (2243A) | Water Enforcement Division
1200 Pennsylvania Ave. N.W. | Washington D.C. 20460
Phone: 202.564.1256

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From: Blanton, Carrie T <carrie.blanton@adem.alabama.gov>
Sent: Monday, July 22, 2019 8:11 AM
To: Armor, Suzanne <Armor.Suzanne@epa.gov>; Ramsey, S Scott <SRamsey@adem.alabama.gov>
Cc: Vinch, James <Vinch.James@epa.gov>; Karl.Fingerhood@usdoj.gov; Ramsey, S Scott <SRamsey@adem.alabama.gov>
Subject: RE: ADEM SEP Policy?

Most recent SEP guidance

Carrie Blanton



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From: Armor, Suzanne <Armor.Suzanne@epa.gov>
Sent: Friday, July 19, 2019 11:40 AM
To: Blanton, Carrie T <carrie.blanton@adem.alabama.gov>; Ramsey, S Scott <SRamsey@adem.alabama.gov>
Cc: Vinch, James <Vinch.James@epa.gov>; Karl.Fingerhood@usdoj.gov; Ramsey, S Scott <SRamsey@adem.alabama.gov>
Subject: RE: ADEM SEP Policy?

Thanks, Carrie!

From: Blanton, Carrie T <carrie.blanton@adem.alabama.gov>
Sent: Friday, July 19, 2019 12:12 PM
To: Armor, Suzanne <Armor.Suzanne@epa.gov>; Ramsey, S Scott <SRamsey@adem.alabama.gov>
Cc: Vinch, James <Vinch.James@epa.gov>; Karl.Fingerhood@usdoj.gov; Ramsey, S Scott <SRamsey@adem.alabama.gov>
Subject: Re: ADEM SEP Policy?

We do have an independent policy but I am out of town for work until next week to pull it from my desktop. There is a chance Scott Ramsey may have a copy of our public guidance? If not I will ensure you get it next week.

From: Armor, Suzanne <Armor.Suzanne@epa.gov>
Sent: Friday, July 19, 2019 9:12:23 AM
To: Blanton, Carrie T
Cc: Vinch, James; Karl.Fingerhood@usdoj.gov
Subject: ADEM SEP Policy?

Hi, Carrie –

I hope all is well with you. I know you are really busy this week, but I have a (hopefully) quick ask: do you have a copy of ADEM's SEP Policy, or the authority for ADEM to pursue SEPs? I thought you had mentioned that ADEM does have such authority, but all I can find is a nonpoint source guidance that points back to EPA's SEP Policy. My management is curious about ADEM's independent SEP authority, if it exists.

Thanks!
Suzanne



SUZANNE K. ARMOR | ATTORNEY-ADVISOR
United States Environmental Protection Agency
Office of Regional Counsel
Office of Water Legal Support
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
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armor.suzanne@epa.gov

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Message

From: Zwany, Deborah (USANYE) [Deborah.Zwany@usdoj.gov]
Sent: 6/26/2019 5:22:56 PM
To: Gallagher, Mark (ENRD) [Mark.Gallagher@usdoj.gov]; Silverman, Matthew (USANYE) [Matthew.Silverman@usdoj.gov]; Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: RE: Northport
Attachments: 3EZ5262-Ltr to Vagelatos Murphy w at.pdf; 38D1585-Ltr dated 2 2 17 to Vagelatos.PDF; Northport - Consent Judgment (DRAFT reflecting 3-14 call with MG).DOCX; 3L82821-Appendix B SEP EPA_R2 Comments Edits 11 01 2018.DOCX

Ex. 5 AC/AWP

From: Gallagher, Mark (ENRD) <MGallagher@ENRD.USDOJ.GOV>
Sent: Wednesday, June 26, 2019 1:13 PM
To: Silverman, Matthew (USANYE) <MSilverman@usa.doj.gov>; Zwany, Deborah (USANYE) <DZwany@usa.doj.gov>
Subject: FW: Northport

Deborah and Matt

Ex. 5 AC/AWP/DP

Lets have a call to discuss this. I'm available anytime until about 3 pm. Also tomorrow.

Also, can you please send to me and Carolyn the very latest version of the CJ, and its appendix B. I have a version of the CJ dated 3/29, but I'm not sure whether that is the latest version. And I have no copies of the appendix b – description of SEP.

-m

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Wednesday, June 26, 2019 12:22 PM
To: Gallagher, Mark (ENRD) <MGallagher@ENRD.USDOJ.GOV>
Cc: Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV>; Bahk, Benjamin <Bahk.Benjamin@epa.gov>
Subject: Northport

Hi Mark,

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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Message

From: Dworkin, Karen (ENRD) [Karen.Dworkin@usdoj.gov]
Sent: 6/14/2019 2:22:49 PM
To: Silverman, Matthew (USANYE) [Matthew.Silverman@usdoj.gov]; Gallagher, Mark (ENRD) [Mark.Gallagher@usdoj.gov]; Makepeace, Caroline [Makepeace.Caroline@epa.gov]
CC: Beckmann, Diane (USANYE) [Diane.Beckmann@usdoj.gov]
Subject: RE: Bookhaven SEP info

Thanks so much for the quick response. Karen.

From: Silverman, Matthew (USANYE) <Matthew.Silverman@usdoj.gov>
Sent: Friday, June 14, 2019 9:33 AM
To: Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV>; Gallagher, Mark (ENRD) <MGallagher@ENRD.USDOJ.GOV>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Cc: Beckmann, Diane (USANYE) <DBeckmann@usa.doj.gov>
Subject: RE: Bookhaven SEP info

Hi Karen,

The SEP for Brookhaven was negotiated as of June 2017. Since that time we have had prolonged negotiations over technical language in the CJ and the civil penalty amount.
Please let us know if you need further info.

Thanks!
Matt

From: Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV>
Sent: Friday, June 14, 2019 7:13 AM
To: Silverman, Matthew (USANYE) <MSilverman@usa.doj.gov>; Gallagher, Mark (ENRD) <MGallagher@ENRD.USDOJ.GOV>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Cc: Beckmann, Diane (USANYE) <DBeckmann@usa.doj.gov>
Subject: RE: Bookhaven SEP info

Matt – How long has the SEP aspect of this settlement been fully negotiated?

From: Silverman, Matthew (USANYE) <Matthew.Silverman@usdoj.gov>
Sent: Friday, May 24, 2019 3:05 PM
To: Gallagher, Mark (ENRD) <MGallagher@ENRD.USDOJ.GOV>; Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Cc: Beckmann, Diane (USANYE) <DBeckmann@usa.doj.gov>
Subject: RE: Bookhaven SEP info

Dear Karen, Caroline, Mark,

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Truly,
Matt

Matthew Silverman
Assistant United States Attorney
Chief of Environmental Litigation, Civil Division
Eastern District of New York
271 Cadman Plaza East, 7th Floor
Brooklyn, New York 11201
Tel: 718-254-6409
Fax: 718-254-6081
matthew.silverman@usdoj.gov

From: Gallagher, Mark (ENRD) <MGallagher@ENRD.USDOJ.GOV>

Sent: Thursday, May 23, 2019 11:47 AM

To: Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV>; Beckmann, Diane (USANYE) <DBeckmann@usa.doj.gov>;
Silverman, Matthew (USANYE) <MSilverman@usa.doj.gov>

Cc: Makepeace, Caroline <Makepeace.Caroline@epa.gov>

Subject: Re: Bookhaven and Northport

Diane and Matt

I know I just emailed you about this but on further reflection, it probably makes sense for you to communicate directly with Karen Dworkin (my boss) and Caroline makepeace .

Please just cc me on whatever you send them. I probably don't need to participate in any phone calls you have with Caroline.

(I'm on a short vacation, and not always easily available)

-Mark

On May 23, 2019, at 10:40 AM, Dworkin, Karen (ENRD) <KDworkin@enrd.usdoj.gov> wrote:

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

If Caroline has more questions beyond any response you send us, are you available to talk with her. (Caroline, Mark can be reached at 202 514 5405).

Thanks Mark.

Message

From: Jonesi, Gary [Jonesi.Gary@epa.gov]
Sent: 6/13/2019 9:48:53 PM
To: Argentieri, Sabrina [argentieri.sabrina@epa.gov]; Banwell, Peter [Banwell.Peter@epa.gov]; Beeler, Cindy [Beeler.Cindy@epa.gov]; Bieri, Britt [bieri.britt@epa.gov]; Burke, Susan [Burke.Susan@epa.gov]; Buterbaugh, Kristin [Buterbaugh.Kristin@epa.gov]; Chabria, Monesh [chabria.monesh@epa.gov]; Chatfield, Ethan [chatfield.ethan@epa.gov]; Clouse, Matt [Clouse.Matt@epa.gov]; Connor, Garth [CONNOR.GARTH@EPA.GOV]; Critchfield, James [Critchfield.James@epa.gov]; Deborah Gitin (deborah.gitin@usdoj.gov) [deborah.gitin@usdoj.gov]; Denny, Andrea [Denny.Andrea@epa.gov]; Dressler, Jason [Dressler.Jason@epa.gov]; Fischer, Lauren [Fischer.Lauren@epa.gov]; Flynn, Bridget [flynn.bridget@epa.gov]; Freed, Elisabeth [Freed.Elisabeth@epa.gov]; Froikin, Sara [Froikin.Sara@epa.gov]; Gallagher, Shirin [Gallagher.Shirin@epa.gov]; Garvey, Melanie [Garvey.Melanie@epa.gov]; Gregory, John [Gregory.John@epa.gov]; Hammond, Lauren [Hammond.Lauren@epa.gov]; Hoffman, Howard [hoffman.howard@epa.gov]; Jonesi, Gary [Jonesi.Gary@epa.gov]; Jouzaitis, Joan [jouzaitis.joan@epa.gov]; Kodish, Jeff [Kodish.Jeff@epa.gov]; leslie.allen@usdoj.gov; Livingston, Peggy [Livingston.Peggy@epa.gov]; Lloyd, David [Lloyd.David@epa.gov]; Loutan, Reema [Loutan.Reema@epa.gov]; Ludwig, Victoria [Ludwig.Victoria@epa.gov]; Makepeace, Caroline [Makepeace.Caroline@epa.gov]; Meisenbach, Caitlin [Meisenbach.Caitlin@epa.gov]; Mills, Clarissa [mills.clarissa@epa.gov]; Moskal, John [Moskal.John@epa.gov]; Mostaghim, Negin [Mostaghim.Negin@epa.gov]; Newman, Erin [newman.erin@epa.gov]; Ogle, Kimberly [Ogle.Kimberly@epa.gov]; OKeefe, Susan [OKeefe.Susan@epa.gov]; Olson, Erik [olson.erik@epa.gov]; Page, Phil [Page.Phil@epa.gov]; Pappas, Alexander [pappas.alexander@epa.gov]; Porter, Amy [Porter.Amy@epa.gov]; Portmess, Jessica [Portmess.Jessica@epa.gov]; Quinones, Edwin [quinones.edwin@epa.gov]; Rehder, Timothy [Rehder.Timothy@epa.gov]; Riedel, Brian [riedel.brian@epa.gov]; Rog, Morgan [Rog.Morgan@epa.gov]; Root, Kathleen [Root.Kathleen@epa.gov]; Seltzer, Mark [Seltzer.Mark@epa.gov]; Shatas, Angie [Shatas.Angie@epa.gov]; Sobel, Aaron [Sobel.Aaron@epa.gov]; Steele, Mariah [Steele.Mariah@epa.gov]; Strine, Lora [Strine.Lora@epa.gov]; Thomas, Marc [Thomas.Marc@epa.gov]; Thrush, Dale [Thrush.Dale@epa.gov]; Tucker, Colby [Tucker.WilliamC@epa.gov]; Wood, Nicole [wood.nicole@epa.gov]; Zevenbergen, Michael (ENRD) [Michael.Zevenbergen@usdoj.gov]; Levandowski, Ryan [levandowski.ryan@epa.gov]
Subject: CREO - Summary of 6/10/19 Call
Attachments: 2019-06-10 Meeting Summary.docx

To: CREO Liaisons

Hi everyone. Thanks to those of you who participated in Monday's monthly call. The 6/10/19 meeting summary is accessible several ways:

- via the [CREO SharePoint site](#);
- via the site's [Meeting Materials page](#);
- attached in Word format; and
- copied below for your convenience.

Thanks.
--Gary



Be kind to the environment.
Please do not print this email unless necessary.

Gary A. Jonesi

National Coordinator
 Clean Renewable Energy Opportunities (CREO)
 Office of Civil Enforcement
 U.S. Environmental Protection Agency
 1200 Pennsylvania Avenue, N.W. (Rm. 4102-C)
 Washington, D.C. 20004

202-564-4002 (direct)
 703-304-6392 (cell)
jonesi.gary@epa.gov

“Clean Renewable Energy Opportunities (CREO) in Civil Enforcement”

Meeting Summary – June 10, 2019

Participants:

Organization	Liaison(s)	Other Contact(s)
Region 1	Joan Jouzaitis	
Region 2		
Region 3	Garth Connor	
Region 4		
Region 5	Nicole Wood-Chi	
Region 6		
Region 7		
Region 8		Tim Rehder
Region 9		Brian Riedel
Region 10	Shirin Gallagher	
Office of Civil Enforcement (OCE) - Immediate Office	Gary Jonesi	
OCE - Air Enforcement Division (AED) Fuels, Vehicles, Engines Enforcement	Caitlin Meisenbach	
OCE - AED-Stationary Source Enforcement		
OCE - Water Enforcement Division (WED)		
OCE - Waste & Chemical Enforcement Division (WCED)	Negin Mostaghim	
OECA - Federal Facilities Enforcement Office (FFEO)	Melanie Garvey	
OECA - Office of Criminal Enforcement, Forensics, and Training (OCEFT)		
OECA - Office of Site Remediation Enforcement (OSRE)		
OLEM - EE Powering America's Land	Lora Strine	
QAR - Green Power Partnership	James Critchfield	
QAR - State & Local Energy & Environment Program	Colby Tucker	
QAR - Voluntary/Regulatory EERE programs		
QAR - Energy Star		
QAR - Office of Transportation & Air Quality (OTAQ)		Susan Burke Aaron Sobel
DOJ - ENRD - Environmental Enforcement Section (EES)		

1. Administrative Matters:

Ex. 5 AC/DP

3. Significant Developments: Gary Jones summarized the following items:

a) Industry Developments:

i) Energy Storage:

- (1) Growth in Grid-Connected Storage: As reported in a [5/21/19 PV Magazine article](#), London-based global information provider [IHS Markit](#) estimates that the U.S. grid-tied energy storage market will nearly double in 2019 and surpass South Korea to become the world's largest grid-ties energy storage market. IHS estimates that 90% of grid-connected energy storage that will be added by 2023 will be lithium-ion (Li-ion) batteries. Such growth in battery storage is being driven by:
- the ability of Li-ion batteries to ramp up faster than natural gas plants;
 - the ability of Li-ion batteries to help stabilize electricity voltage and frequency;
 - the ability of Li-ion batteries to provide power when wind/solar is not generating energy;
 - favorable policies (e.g., [FERC Order 841](#), a 2/15/18 rule removing energy storage barriers);
 - tax incentives such as the Investment Tax Credit (ITC) when paired with solar power; and
 - dramatic declines in the cost of Li-ion batteries.
- Recent Large-Scale Energy Storage Project: As noted in a [5/31/19 Utility Dive article](#), on 5/30/19 Mitsubishi Hitachi Power Systems (MHPS) and Utah Governor Gary Herbert [announced](#) that the state would host the "world's largest" renewable energy storage project, including 1-gigawatt (GW) of storage capacity, enough to serve 150,000 households for a year. The Advanced Clean Energy Storage (ACES) project "is positioned to integrate seamlessly with the western U.S. power grid utilizing existing infrastructure," and will deploy four types of clean energy storage at utility scale: (1) renewable hydrogen; (2) compressed air energy storage; (3) large scale flow batteries; and (4) solid oxide fuel cells.
 - Investments in Energy Storage Innovations: As noted in a [5/14/19 blog post](#) from Microsoft founder Bill Gates, the Breakthrough Energy Ventures group that Gates supports is investing in innovative energy storage ideas to help facilitate clean renewable energy deployment such as wind and solar, including:
 - pumped storage hydropower via pressurized water in underground wells;
 - longer-duration Li-ion batteries; and
 - new types of thermal energy storage (e.g., using even better molten salt technologies).
 - Gravity-Based Energy Storage Commercialized: Several recent articles reported on how gravity-based energy storage is now beginning to be commercially available. For example, an [11/19/18 Renewable Energy World article](#) and a [6/7/19 Renewable Energy World article](#) report that a

Swiss startup company and construction conglomerate are partnering to deploy energy storage that is:

“inspired by pumped hydro plants that rely on the power of gravity and the movement of water to store and discharge electricity . . . [but] replaces water with custom made concrete bricks . . . [which] can deliver all the benefits of a gravity-based pumped hydro system with lower price, higher round trip efficiency, without the requirement for specific land topographies and negative environmental or wildlife impacts . . . electricity from renewables can be delivered for less than the price of fossil fuels 24 hours a day.”

- ii) **Repurposing Retired Coal Plants for Renewable Energy:** As noted in a [5/16/19 CleanTechnica article](#), a Boston-based company that focuses on electric transmission systems announced its plans to invest approximately \$650 million at Brayton Point to support the growing offshore wind industry. The company says it will build a 1,200-megawatt high voltage direct current converter and 400 megawatt-hours of battery storage on site, allowing an estimated 600,000 homes to be powered by the new facility.
- iii) **Large-Scale Clean Renewable Energy Projects:** As reported in a [5/30/19 Greentech Media article](#), Facebook announced on 5/30/19 that it finalized a tax-equity financing agreement for a 379-megawatt (MW) solar project in West Texas, marking “the first time the social media company, which last year committed to reaching 100 percent renewables by 2020, has directly invested in a wind or solar project.” Analysts predict that the investment by Facebook – who led the Renewable Energy Buyers Alliance (REBA) in capacity purchased in 2018 – signals more coming investment that “allows companies . . . to see returns on investment rather than just savings [on electricity].” <https://www.engadget.com/2019/05/31/facebook-solar-farm-texas-renewable-energy/>

b) State & Local Developments:

- i) **Colorado:** As noted in a [5/31/19 ClimateWire article](#), on 5/30/19 Governor Jared Polis signed a series of seven clean and renewable energy bills into law, giving Colorado regulators “considerable power to green the state's economy.” Major elements of the legislation include required greenhouse gas emissions reductions of 26% by 2025, 50% by 2030, and 90% by 2050, a deadline to develop a plan to meet those targets, and requirements directing the state public utilities commission to oversee power-sector emissions reductions and to consider the social cost of carbon. In addition, the package establishes new and updated standards for home appliance energy and water efficiency, building energy codes, and community solar gardens. See remarks from Governor Polis in a local Denver TV news story.
- ii) **Maryland:** As noted in a [5/23/19 EnergyWire article](#), on 5/22/19 Governor Larry Hogan stated that he would allow the “Clean Energy and Jobs Act” to pass into law without his signature, boosting the state’s Renewable Portfolio Standard (RPS) to 50% by 2030. After calling the bill “well-intentioned” but “rushed and deeply flawed,” the governor stated that he would not veto the measure “in the

hopes of opening the door for a productive conversation to truly advance clean and renewable energy in our state.”

iii) Texas: As reported in a 5/28/19 EnergyWire article, Texas legislators fought off a number of attempts to “demonize wind” during the last legislative session. Among other things, the Legislature stalled a bill calling for study of the effects of ending renewable energy subsidies. Meanwhile, the Legislature voted to continue a property tax abatement that is popular among the wind industry, and passed a bill standardizing procedures related to wind facility decommissioning.

c) **Legislative Developments:** In a 5/15/19 Greenwire article, “CEOs, green groups launch joint initiative,” CEOs of the companies and environmental groups whose logos are reproduced below (no endorsement express or implied) have banded together to advance climate action and federal climate policy in Congress. The initiative, called the CEO Climate Dialogue, outlines six principles it is advocating for, including significant reductions in greenhouse gas emissions (at least 80% economywide by 2050), economywide carbon pricing, and durable, responsive policies that don't harm the economy.



4. Roundtable:

Gary began by highlighting a 6/7/19 PV Magazine article noting that the Database of State Incentives for Renewables & Efficiency (DSIRE) has lost its DOE funding. Gary noted that the DSIRE website still appears functional, but he promised to look further into the tool's status.

Ex. 5 AC/DP

Colby Tucker (OAR - State & Local Energy & Environment Program) noted that there are now updated regional data in EPA's AVoided Emissions and geneRation Tool (AVERT) & CO-Benefits Risk Assessment (COBRA) Health Impacts Screening and Mapping tools, and encouraged CREO liaisons to utilize these resources.

5. **Adjournment:** Gary reminded everyone that the July call is cancelled, and that the next call is scheduled for August 12 at 3pm Eastern time.

Message

From: Folkemer, Nathaniel [Folkemer.Nathaniel@epa.gov]
Sent: 6/4/2019 3:39:36 PM
To: Makepeace, Caroline [Makepeace.Caroline@epa.gov]; Emmerson, Caroline [Emmerson.Caroline@epa.gov]; Ingram, Amir [Ingram.Amir@epa.gov]
Subject: RE: Materials for Claire Murray SEP meeting -- REVISED Talking Points
Attachments: Buck Amendment 645 - on settlements p. H4937.pdf; Buck Amendment and Consent Decrees Requiring Contributions of Funds to Third Parties Memorandum 7 21 2015 - DOJ.docx; Goodlatte Amd. - Congressional Record June 2, 2015 - see pages H3733-H3734.pdf; H R 5063 Settlement Slush Funds - May 11, 2016 Hearing notes.docx; DOJ comments on HR 5063 Stop Settlement Slush Fund Act_cleared.pdf; House Congressional Record - H.R. 732 passage 10.24.2017 PgH8107.pdf; H.R._732_Congressional_Report_CRPT-115-72_March_30_2017.pdf; SEP related Legislation and Associated Legislative Records.docx

Caroline,

Thanks for letting us know we can stand down on your request. As I mentioned on the phone, I already started pulling this list of materials and a rough cut/paste list of prior legislation.

Oldest = Goodlatte and Buck amendments from June / July 2015 (used identical language) and email from DOJ of the potential impacts of the amendment.

H.R. 5063 – Judiciary Committee markup notes from 5/11/2016 that includes amendments and discussion of the bill

H.R. 732 – Congressional Record (10/24/2017) included roughly 19 pages of debate, the House Report (3/30/2017) that includes an entire dissenting opinion section

Nate Folkemer
(w) 202-564-0668
(EPA cell) 202-578-9934

From: Makepeace, Caroline
Sent: Tuesday, June 4, 2019 10:38 AM
To: Emmerson, Caroline <Emmerson.Caroline@epa.gov>; Folkemer, Nathaniel <Folkemer.Nathaniel@epa.gov>; Ingram, Amir <Ingram.Amir@epa.gov>
Subject: FW: Materials for Claire Murray SEP meeting -- REVISED Talking Points

Note that we are no longer at the same place in terms of the ask, and that the original ask was not communicated in such strong terms.

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Makepeace, Caroline
Sent: Tuesday, May 28, 2019 3:29 PM
To: Bailey-Morton, Ethel <Bailey-Morton.Ethel@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Cc: Shiffman, Cari <Shiffman.Cari@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>;

Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>

Subject: RE: Materials for Claire Murray SEP meeting -- REVISED Talking Points

The revised talking points, attached

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Bailey-Morton, Ethel

Sent: Tuesday, May 28, 2019 3:06 PM

To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>

Cc: Shiffman, Cari <Shiffman.Cari@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>;

Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>

Subject: RE: Materials for Claire Murray SEP meeting

Caroline,

Please provide copies to the IO office for this meeting tomorrow.

Thanks,
Ethel

From: Makepeace, Caroline

Sent: Tuesday, May 28, 2019 3:04 PM

To: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>

Cc: Shiffman, Cari <Shiffman.Cari@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>;

Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Bailey-Morton, Ethel <Bailey-Morton.Ethel@epa.gov>

Subject: RE: Materials for Claire Murray SEP meeting

Just got some feedback from Larry on the talkers, so will be tweaking that piece and re-sending.

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Makepeace, Caroline

Sent: Tuesday, May 28, 2019 2:57 PM

To: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>

Cc: Shiffman, Cari <Shiffman.Cari@epa.gov>; Rosemarie Kelley <Kelley.Rosemarie@epa.gov>; Karin Koslow <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Amy Porter <Porter.Amy@epa.gov>;

Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Bailey-Morton, Ethel <Bailey-Morton.Ethel@epa.gov>

Subject: Materials for Claire Murray SEP meeting

Attached are talking points and background materials for tomorrow's meeting with Claire Murray, on SEPs in state and local government cases.

- 1) Talking Points for the Wednesday discussion with Claire Murray
- 2) Examples of Typical Muni SEPs
- 3) Synopsis of current state of affairs on SEPs, with DOJ/AAG
- 4) SEP Fact Sheet
- 5) 1977 MOU with DOJ

Ex. 5 AC/DP

Just let us know if you have any questions.

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Makepeace, Caroline

Sent: Tuesday, May 28, 2019 12:10 PM

To: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>

Cc: Shiffman, Cari <Shiffman.Cari@epa.gov>; Rosemarie Kelley <Kelley.Rosemarie@epa.gov>; Karin Koslow <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Amy Porter <Porter.Amy@epa.gov>;

Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>

Subject: Advance copy of Revised Talking points for Claire Murray SEP meeting

Susan –

Cari suggested that, since time is tight, we share the attached “advance copy” of revised talking points to see if the new first set of bullets works for you, to reflect the conversation at the OCE general. And, to answer any questions you might have.

Later today we will be following up with:

- 1) the list of muni SEP examples (no changes);
- 2) the SEP fact sheet (also no changes);
- 3) the “state of play” on SEPs;

Ex. 5 AC/DP

- 5) a clean copy of the 1977 MOU with DOJ. And, of course, the talking points with any edits you'd like.

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

Message

From: Porter, Amy [Porter.Amy@epa.gov]
Sent: 6/4/2019 11:06:40 PM
To: Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: Fwd: Draft Thank-You Email from Bodine to Murray re meeting on Muni SEPs

Thank you, Caroline!

Sent from my iPhone

Begin forwarded message:

From: "Kelley, Rosemarie" <Kelley.Rosemarie@epa.gov>
Date: June 4, 2019 at 7:02:34 PM EDT
To: "Starfield, Lawrence" <Starfield.Lawrence@epa.gov>
Cc: "Koslow, Karin" <Koslow.Karin@epa.gov>, "Porter, Amy" <Porter.Amy@epa.gov>, "Makepeace, Caroline" <Makepeace.Caroline@epa.gov>, "Fogarty, Johnpc" <Fogarty.Johnpc@epa.gov>, "Buterbaugh, Kristin" <Buterbaugh.Kristin@epa.gov>, "Shiffman, Cari" <Shiffman.Cari@epa.gov>
Subject: Draft Thank-You Email from Bodine to Murray re meeting on Muni SEPs

Larry—Here is our proposed note from Susan to Claire. We look forward to your feedback.

Ex. 5 AC/DP

Ex. 5 AC/DP

Regards,
Rosemarie A. Kelley, Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
202-564-4014

Message

From: Porter, Amy [Porter.Amy@epa.gov]
Sent: 6/5/2019 1:44:24 PM
To: Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: RE: Draft Thank-You Email from Bodine to Murray re meeting on Muni SEPs

I agree!

From: Makepeace, Caroline
Sent: Wednesday, June 05, 2019 9:43 AM
To: Porter, Amy <Porter.Amy@epa.gov>
Subject: Re: Draft Thank-You Email from Bodine to Murray re meeting on Muni SEPs

Ex. 5 AC/DP

Sent from my iPhone

On Jun 5, 2019, at 9:40 AM, Porter, Amy <Porter.Amy@epa.gov> wrote:

Hi – Are you able to redraft this am?
Thx!

From: Starfield, Lawrence
Sent: Wednesday, June 05, 2019 9:09 AM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Cc: Koslow, Karin <Koslow.Karin@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>
Subject: RE: Draft Thank-You Email from Bodine to Murray re meeting on Muni SEPs
Importance: High

Ex. 5 AC/DP

Larry

This message is CONFIDENTIAL, and may contain legally privileged information. If you are not the intended recipient, or believe you received this communication in error, please delete it immediately, do not copy, and notify the sender. Thank you.

From: Kelley, Rosemarie
Sent: Tuesday, June 04, 2019 7:03 PM
To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Cc: Koslow, Karin <Koslow.Karin@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>
Subject: Draft Thank-You Email from Bodine to Murray re meeting on Muni SEPs

Larry—Here is our proposed note from Susan to Claire. We look forward to your feedback.

Ex. 5 AC/DP

Ex. 5 AC/DP

Regards,
Rosemarie A. Kelley, Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
202-564-4014

Message

From: Porter, Amy [Porter.Amy@epa.gov]
Sent: 6/5/2019 1:44:40 PM
To: Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: RE: Draft Thank-You Email from Bodine to Murray re meeting on Muni SEPs

Just send a clean version to RK et al. thanks!

From: Makepeace, Caroline
Sent: Wednesday, June 05, 2019 9:43 AM
To: Porter, Amy <Porter.Amy@epa.gov>
Subject: Re: Draft Thank-You Email from Bodine to Murray re meeting on Muni SEPs

Ex. 5 AC/DP

Sent from my iPhone

On Jun 5, 2019, at 9:40 AM, Porter, Amy <Porter.Amy@epa.gov> wrote:

Hi – Are you able to redraft this am?
Thx!

From: Starfield, Lawrence
Sent: Wednesday, June 05, 2019 9:09 AM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Cc: Koslow, Karin <Koslow.Karin@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>
Subject: RE: Draft Thank-You Email from Bodine to Murray re meeting on Muni SEPs
Importance: High

Ex. 5 AC/DP

Larry

This message is CONFIDENTIAL, and may contain legally privileged information. If you are not the intended recipient, or believe you received this communication in error, please delete it immediately, do not copy, and notify the sender. Thank you.

From: Kelley, Rosemarie
Sent: Tuesday, June 04, 2019 7:03 PM
To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Cc: Koslow, Karin <Koslow.Karin@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>
Subject: Draft Thank-You Email from Bodine to Murray re meeting on Muni SEPs

Larry—Here is our proposed note from Susan to Claire. We look forward to your feedback.

Ex. 5 AC/DP

Ex. 5 AC/DP

Regards,
Rosemarie A. Kelley, Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
202-564-4014

Message

From: Gallagher, Mark (ENRD) [Mark.Gallagher@usdoj.gov]
Sent: 6/5/2019 4:50:04 PM
To: Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: RE: Brookhaven SEP info

Thank you. helpful to know.

m

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Wednesday, June 5, 2019 12:34 PM
To: Gallagher, Mark (ENRD) <MGallagher@ENRD.USDOJ.GOV>
Subject: RE: Brookhaven SEP info

I hear you... I conflate cases all the time! ☺

Ex. 5 AC/AWP/DP

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Gallagher, Mark (ENRD) <Mark.Gallagher@usdoj.gov>
Sent: Wednesday, June 05, 2019 12:28 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: Brookhaven SEP info

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

-m

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Wednesday, June 5, 2019 12:24 PM
To: Gallagher, Mark (ENRD) <MGallagher@ENRD.USDOJ.GOV>
Subject: RE: Brookhaven SEP info

Hi Mark,
Thanks for all your help with this.

Ex. 5 Attorney Client (AC)

Ex. 5 AC/AWP/DP

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Gallagher, Mark (ENRD) <Mark.Gallagher@usdoj.gov>
Sent: Wednesday, June 05, 2019 11:18 AM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: Bookhaven SEP info

Hi caroline

Ex. 5 AC/AWP/DP

-m

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Monday, May 27, 2019 10:01 PM
To: Silverman, Matthew (USANYE) <MSilverman@usa.doj.gov>
Cc: Gallagher, Mark (ENRD) <MGallagher@ENRD.USDOJ.GOV>; Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV>; Beckmann, Diane (USANYE) <DBeckmann@usa.doj.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>
Subject: Re: Bookhaven SEP info

Thank you!

Sent from my iPhone

On May 24, 2019, at 3:05 PM, Silverman, Matthew (USANYE) <Matthew.Silverman@usdoj.gov> wrote:

Dear Karen, Caroline, Mark,

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Truly,
Matt

Matthew Silverman
Assistant United States Attorney
Chief of Environmental Litigation, Civil Division
Eastern District of New York
271 Cadman Plaza East, 7th Floor
Brooklyn, New York 11201
Tel: 718-254-6409
Fax: 718-254-6081
matthew.silverman@usdoj.gov

From: Gallagher, Mark (ENRD) <MGallagher@ENRD.USDOJ.GOV>
Sent: Thursday, May 23, 2019 11:47 AM
To: Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV>; Beckmann, Diane (USANYE) <DBeckmann@usa.doj.gov>; Silverman, Matthew (USANYE) <MSilverman@usa.doj.gov>
Cc: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: Re: Bookhaven and Northport

Diane and Matt

I know I just emailed you about this but on further reflection, it probably makes sense for you to communicate directly with Karen Dworkin (my boss) and Caroline makepeace .
Please just cc me on whatever you send them. I probably don't need to participate in any phone calls you have with Caroline.

(I'm on a short vacation, and not always easily available)

-Mark

On May 23, 2019, at 10:40 AM, Dworkin, Karen (ENRD) <KDworkin@enrd.usdoj.gov> wrote:

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

If Caroline has more questions beyond any response you send us, are you available to talk with her. (Caroline, Mark can be reached at 202 514 5405).

Thanks Mark.

<ENV_ENFORCEMENT--March 27 2019 (v2) .docx>

<BrookhavenLandfillCaseSummary.docx>

<Simpson Ltr.pdf>

Message

From: Porter, Amy [Porter.Amy@epa.gov]
Sent: 6/5/2019 6:38:10 PM
To: Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: RE: Revised SEP Note to Claire Murray -- as of 2:23

That looks great! Thank you!

From: Makepeace, Caroline
Sent: Wednesday, June 05, 2019 2:34 PM
To: Porter, Amy <Porter.Amy@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>
Subject: RE: Revised SEP Note to Claire Murray -- as of 2:23

Ex. 5 AC/DP

Ex. 5 AC/DP

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Porter, Amy
Sent: Wednesday, June 05, 2019 12:50 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>
Subject: RE: Revised SEP Note to Claire Murray

Rosemarie – I just saw your email requesting edits to the **Ex. 5 AC/DP** Can you please be more specific?

Thanks
Amy

From: Makepeace, Caroline
Sent: Wednesday, June 05, 2019 10:26 AM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>
Subject: Revised SEP Note to Claire Murray

Ex. 5 AC/DP

Ex. 5 AC/DP

Caroline Makepeace
Senior Counsel

Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

Message

From: Dworkin, Karen (ENRD) [Karen.Dworkin@usdoj.gov]
Sent: 5/24/2019 7:09:59 PM
To: Silverman, Matthew (USANYE) [Matthew.Silverman@usdoj.gov]; Gallagher, Mark (ENRD) [Mark.Gallagher@usdoj.gov]; Makepeace, Caroline [Makepeace.Caroline@epa.gov]
CC: Beckmann, Diane (USANYE) [Diane.Beckmann@usdoj.gov]
Subject: RE: Bookhaven SEP info

Thanks very much!

From: Silverman, Matthew (USANYE) <Matthew.Silverman@usdoj.gov>
Sent: Friday, May 24, 2019 3:05 PM
To: Gallagher, Mark (ENRD) <MGallagher@ENRD.USDOJ.GOV>; Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Cc: Beckmann, Diane (USANYE) <DBeckmann@usa.doj.gov>
Subject: RE: Bookhaven SEP info

Dear Karen, Caroline, Mark,

Ex. 5 AC/AWP/DP

Truly,
Matt

Matthew Silverman
Assistant United States Attorney
Chief of Environmental Litigation, Civil Division
Eastern District of New York
271 Cadman Plaza East, 7th Floor
Brooklyn, New York 11201
Tel: 718-254-6409
Fax: 718-254-6081
matthew.silverman@usdoj.gov

From: Gallagher, Mark (ENRD) <MGallagher@ENRD.USDOJ.GOV>

Sent: Thursday, May 23, 2019 11:47 AM

To: Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV>; Beckmann, Diane (USANYE) <DBeckmann@usa.doj.gov>; Silverman, Matthew (USANYE) <MSilverman@usa.doj.gov>

Cc: Makepeace, Caroline <Makepeace.Caroline@epa.gov>

Subject: Re: Bookhaven and Northport

Diane and Matt

I know I just emailed you about this but on further reflection, it probably makes sense for you to communicate directly with Karen Dworkin (my boss) and Caroline makepeace .

Please just cc me on whatever you send them. I probably don't need to participate in any phone calls you have with Caroline.

(I'm on a short vacation, and not always easily available)

-Mark

On May 23, 2019, at 10:40 AM, Dworkin, Karen (ENRD) <KDworkin@enrd.usdoj.gov> wrote:

Ex. 5 AC/AWP/DP

If Caroline has more questions beyond any response you send us, are you available to talk with her. (Caroline, Mark can be reached at 202 514 5405).

Thanks Mark.

Message

From: Silverman, Matthew (USANYE) [Matthew.Silverman@usdoj.gov]
Sent: 5/24/2019 7:04:49 PM
To: Gallagher, Mark (ENRD) [Mark.Gallagher@usdoj.gov]; karen.dworkin@usdoj.gov; Makepeace, Caroline [Makepeace.Caroline@epa.gov]
CC: Beckmann, Diane (USANYE) [Diane.Beckmann@usdoj.gov]
Subject: RE: Bookhaven SEP info
Attachments: ENV_ENFORCEMENT--March 27 2019 (v2) .docx; BrookhavenLandfillCaseSummary.docx; Simpson Ltr.pdf

Dear Karen, Caroline, Mark,

Ex. 5 AC/AWP/DP

Matt

Matthew Silverman
Assistant United States Attorney
Chief of Environmental Litigation, Civil Division
Eastern District of New York
271 Cadman Plaza East, 7th Floor
Brooklyn, New York 11201
Tel: 718-254-6409
Fax: 718-254-6081
matthew.silverman@usdoj.gov

From: Gallagher, Mark (ENRD) <MGallagher@ENRD.USDOJ.GOV>
Sent: Thursday, May 23, 2019 11:47 AM
To: Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV>; Beckmann, Diane (USANYE) <DBeckmann@usa.doj.gov>; Silverman, Matthew (USANYE) <MSilverman@usa.doj.gov>
Cc: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: Re: Bookhaven and Northport

Diane and Matt

I know I just emailed you about this but on further reflection, it probably makes sense for you to communicate directly with Karen Dworkin (my boss) and Caroline makepeace .
Please just cc me on whatever you send them. I probably don't need to participate in any phone calls you have with Caroline.

(I'm on a short vacation, and not always easily available)

-Mark

On May 23, 2019, at 10:40 AM, Dworkin, Karen (ENRD) <KDworkin@enrd.usdoj.gov> wrote:

Ex. 5 AC/AWP/DP

If Caroline has more questions beyond any response you send us, are you available to talk with her. (Caroline, Mark can be reached at 202 514 5405).

Thanks Mark.

Message

From: Jonesi, Gary [Jonesi.Gary@epa.gov]
Sent: 5/28/2019 3:08:23 PM
To: Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: RE: SEP paper for tomorrow
Attachments: EPA-DOJ MOU 1977-42 FR 48942.pdf

See attached

--Gary



Be kind to the environment.
Please do not print this email unless necessary.

Gary A. Jonesi
Office of Civil Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W. (Rm. 4102-C)
Washington, D.C. 20004

202-564-4002 (direct)
703-304-6392 (cell)
jonesi.gary@epa.gov

From: Makepeace, Caroline
Sent: Tuesday, May 28, 2019 11:05 AM
To: Jonesi, Gary <Jonesi.Gary@epa.gov>
Subject: FW: SEP paper for tomorrow

Per our chat -- just need to strip off 1st page

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Fogarty, Johnpc
Sent: Tuesday, May 28, 2019 10:22 AM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: SEP paper for tomorrow

MOA attached – if you have adobe pro and can strip off the first page, should send to Munsel to add it to the intranet page w/our MOUs.

Ex. 5 AC/DP

From: Makepeace, Caroline
Sent: Tuesday, May 28, 2019 9:54 AM
To: Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>
Subject: SEP paper for tomorrow

I took a crack at revising. Nothing on the MOA—partly cause I still need to find a copy, partly cause I'm not sure this is the spot

<< File: Talking Points for Meeting with PDAAG Claire Murray on Application of the Principles and Procedures for Civil Consent Decrees and Settlement Agreements with State.5.28.2019.docx >>

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Makepeace, Caroline
Sent: Thursday, May 23, 2019 4:44 PM
To: Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>
Subject: RE: It was sort of noisy/garbled at the end

Ex. 5 AC/DP

Ex. 5 AC/DP

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

-----Original Message-----

From: Fogarty, Johnpc
Sent: Thursday, May 23, 2019 4:26 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: It was sort of noisy/garbled at the end

What are our marching orders/next steps?

Sent from my iPhone

Message

From: Porter, Amy [Porter.Amy@epa.gov]
Sent: 8/7/2019 12:17:15 PM
To: Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: FW: TO DO ITEM: Administrator Hearing in September. MONDAY 8/5 deadline re topics for issue papers, WED 8/14 deadline for updated/new papers
Attachments: OECA FINAL.zip; 04-01-2019 - TOC Program Fact Sheets - Budget Hearings_ (002).docx; Program Office Fact Sheet Format.docx

Importance: High

Ex. 5 AC/DP

Thank you!
Amy

From: Holmes, Carol <Holmes.Carol@epa.gov>
Sent: Thursday, August 01, 2019 5:25 PM
To: OECA-OCE-MANAGERS <OECAOCEMANAGERS@epa.gov>
Subject: TO DO ITEM: Administrator Hearing in September. MONDAY 8/5 deadline re topics for issue papers, WED 8/14 deadline for updated/new papers
Importance: High

Hi Everyone – sorry for the Thursday afternoon in August with short Monday August 5th deadline, but you know how OCIR is....sigh. The good news is that we have almost 2 weeks to do any substantive drafting.

Per Caroline's email below, the Administrator is testifying in September, so they want to update the batch of briefing papers that are used when he testifies. We have two critical asks: (1) are there any existing issue papers that can be struck, or any we need to add (Monday, August 5th deadline), and (2) update existing papers that are stale and draft new ones (Wednesday August 14th deadline).

The existing OECA issue papers are (I've added some parentheticals):

1. Criminal Enforcement – New Cases
2. Criminal Enforcement – Number of Agents
3. Drinking Water Enforcement (*need to update, if we keep?*)
4. Enforcement Activity Annual Results
5. FY20 OECA Enforcement and Compliance Programs
6. Information Requests (*is this still a "hot" topic or can we strike this paper?*)
7. Inspection Numbers
8. Lead Enforcement Activity
9. Notice of Judicial Referrals (*is this still a "hot" topic or can we strike this paper?*)
10. PFAS Enforcement Activity (need to update)
11. Transition National Enforcement Initiatives to National Compliance Initiatives (*OC should update this to reflect final NCIs, with our input*)
12. Using Superfund Enforcement Tools to Promote Cleanup and Redevelopment

13. Key OECA Program Changes (needs a lot of updating based on other issue papers)

OCE DEADLINES:

Monday August 5th COB – please let me, Amy and Karin know if you want to draft a new issue paper, or strike an existing one.

Wednesday August 14th COB – final papers, approved through Rosemarie or Karin, to me. Please use your Generals that week to get final approval by Rosemarie/Karin.

Attached are:

1. OECA Final.zip.. Zip file containing all the latest versions of the OECA issue papers last updated this Spring. In other words, the starting point for revisions/updates.
2. Program Office Fact Sheet Format. The latest fact sheet format.
3. 01-01-2019-TOC Program Fact Sheets.... A list of all the issue papers provided by all the program offices. *Let me know if you are interested in reviewing any issue papers of another program office and I'll let OAP know they should request a copy of the latest version (which may be changing of course). I already have all of OLEM's if anyone wants those.*

Thanks, Carol

May contain sensitive communication for internal deliberations only, attorney-client communication, attorney work product, and/or enforcement sensitive information. Do not distribute outside the U.S. Government.

Carol S. Holmes
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement (MC 2241A)
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460
Phone (202) 564-8709

From: Emmerson, Caroline <Emmerson.Caroline@epa.gov>

Sent: Thursday, August 1, 2019 4:54 PM

To: Holmes, Carol <Holmes.Carol@epa.gov>; Kadish, Rochele <Kadish.Rochele@epa.gov>; Cavanaugh, Charles <Cavanaugh.Charles@epa.gov>; Fisher, Mike <Fisher.Mike@epa.gov>; DeLeon, Rafael <DeLeon.Rafael@epa.gov>; Mackey, Cyndy <Mackey.Cyndy@epa.gov>; Leff, Karin <Leff.Karin@epa.gov>; Muller, Marie <MULLER.MARIE@EPA.GOV>

Cc: Gardner, Monica <Gardner.Monica@epa.gov>; Patterson, Kenneth <Patterson.Kenneth@epa.gov>; Rae, Sarah <Rae.Sarah@epa.gov>; Spina, Providence <Spina.Providence@epa.gov>; Vizard, Elizabeth <Vizard.Elizabeth@epa.gov>; Swack, David <Swack.David@epa.gov>; Warren, JohnM <Warren.JohnM@epa.gov>; Dalzell, Sally <Dalzell.Sally@epa.gov>; Azad, Ava <Azad.Ava@epa.gov>; Folkemer, Nathaniel <Folkemer.Nathaniel@epa.gov>; Ingram, Amir <Ingram.Amir@epa.gov>

Subject: Administrator Hearing: issue papers- Due August 15th

Importance: High

All,

The Administrator will be testifying before the House Science, Space and Technology Committee in September. OCIR expects that this will be a general oversight hearing to cover a variety of potential topics.

OCIR is asking for any updates/deletions/additions to the attached materials from the spring budget hearings:

- Issue paper table of contents (TOC) (list of OECA issues papers below);
- OECA Issue papers:
 - Criminal Enforcement – New Cases
 - Criminal Enforcement – Number of Agents
 - Drinking Water Enforcement
 - Enforcement Activity Annual Results
 - FY20 OECA Enforcement and Compliance Programs
 - Information Requests
 - Inspection Numbers
 - Lead Enforcement Activity
 - Notice of Judicial Referrals
 - PFAS Enforcement Activity
 - Transition National Enforcement Initiatives to National Compliance Initiatives
 - Using Superfund Enforcement Tools to Promote Cleanup and Redevelopment
 - Key OECA Program Changes

Also attached are:

- OLEM issue papers (for your awareness, **note: we are not taking comment on these**)
- Template for new issue papers

Due Dates:

- By Monday (8/5) at noon or sooner: Please let me know if you have any recommended additions or deletions to the OECA TOC list.
- By Noon, Thursday (8/15), please provide any new issue papers and any updates/deletions/additions to the attached issue papers.

Please note the following:

Site fact sheets: OCIR will be requesting site issue papers for committee members from the regions and they may ask us for additional info too. We will keep you posted.

Other AAship papers: please let me know if you would like to see any particular issue papers from other AAships, understanding that they might be making changes/additions/deletions.

We greatly appreciate your help in getting these papers in final form for clearance by our AA.

Thanks and please let me know any questions.

Caroline

Caroline Emmerson, Director, Policy and Legislative Coordination Division/OAP/OECA

*U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460/202-564-1716
(office), emmerson.caroline@epa.gov*

This message is CONFIDENTIAL, and may contain legally privileged information. If you are not the intended recipient, or believe you received this communication in error, please delete it immediately, do not copy, and notify the sender.
Thank you.

Message

From: Gallagher, Mark (ENRD) [Mark.Gallagher@usdoj.gov]
Sent: 6/27/2019 7:50:24 PM
To: Zwany, Deborah (USANYE) [Deborah.Zwany@usdoj.gov]; Makepeace, Caroline [Makepeace.Caroline@epa.gov]
CC: Silverman, Matthew (USANYE) [Matthew.Silverman@usdoj.gov]
Subject: RE: Northport

Thank you caroline!

From: Zwany, Deborah (USANYE) <Deborah.Zwany@usdoj.gov>
Sent: Thursday, June 27, 2019 3:28 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Cc: Gallagher, Mark (ENRD) <MGallagher@ENRD.USDOJ.GOV>; Silverman, Matthew (USANYE) <MSilverman@usa.doj.gov>; Bahk, Benjamin <Bahk.Benjamin@epa.gov>; Modigliani, Justine <Modigliani.Justine@epa.gov>; Murphy, Kara <Murphy.Kara@epa.gov>; Green, Katherine <Green.Katherine@epa.gov>; McKenna, Douglas <McKenna.Douglas@epa.gov>; Feinmark, Phyllis <Feinmark.Phyllis@epa.gov>; Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV>
Subject: Re: Northport

Thanks Caroline. I will touch base with Kara and reach out if I have questions. Thank you.

Deborah

On Jun 27, 2019, at 3:24 PM, Makepeace, Caroline <Makepeace.Caroline@epa.gov> wrote:

Hi Mark, Deborah and Matt,

Ex. 5 AC/AWP/DP

Thanks so much for all your help working through this – it's certainly been a challengingly uncertain "hurry-up-and-wait" time, when all we all want to do is get these cases done, with the best possible result!

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Gallagher, Mark (ENRD) <Mark.Gallagher@usdoj.gov>
Sent: Wednesday, June 26, 2019 1:37 PM
To: Zwany, Deborah (USANYE) <Deborah.Zwany@usdoj.gov>; Silverman, Matthew (USANYE) <Matthew.Silverman@usdoj.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: Northport

Carolyn:

Ex. 5 AC/AWP/DP

Let us know if you need anything further.

Best

M

p.s. what is your phone number?

From: Zwany, Deborah (USANYE) <Deborah.Zwany@usdoj.gov>
Sent: Wednesday, June 26, 2019 1:23 PM
To: Gallagher, Mark (ENRD) <MGallagher@ENRD.USDOJ.GOV>; Silverman, Matthew (USANYE) <MSilverman@usa.doj.gov>; makepeace.caroline@epa.gov
Subject: RE: Northport

Ex. 5 AC/AWP/DP

From: Gallagher, Mark (ENRD) <MGallagher@ENRD.USDOJ.GOV>
Sent: Wednesday, June 26, 2019 1:13 PM
To: Silverman, Matthew (USANYE) <MSilverman@usa.doj.gov>; Zwany, Deborah (USANYE) <DZwany@usa.doj.gov>
Subject: FW: Northport

Deborah and Matt

Ex. 5 AC/AWP/DP

Lets have a call to discuss this. I'm available anytime until about 3 pm. Also tomorrow.

Also, can you please send to me and Carolyn the very latest version of the CJ, and its appendix B. I have a version of the CJ dated 3/29, but I'm not sure whether that is the latest version. And I have no copies of the appendix b – description of SEP.

-m

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Wednesday, June 26, 2019 12:22 PM
To: Gallagher, Mark (ENRD) <MGallagher@ENRD.USDOJ.GOV>
Cc: Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV>; Bahk, Benjamin <Bahk.Benjamin@epa.gov>
Subject: Northport

Hi Mark,

Ex. 5 AC/AWP/DP

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

Message

From: Porter, Amy [Porter.Amy@epa.gov]
Sent: 8/1/2019 10:11:09 AM
To: Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: Re: Draft SEPs State/Local Memo

Thank you, Caroline!

Sent from my iPhone

On Jul 31, 2019, at 5:48 PM, Makepeace, Caroline <Makepeace.Caroline@epa.gov> wrote:

Hi All

Ex. 6 Personal Privacy (PP)

Ex. 5 AC/DP

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Porter, Amy <Porter.Amy@epa.gov>
Sent: Wednesday, July 31, 2019 10:57 AM
To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>
Subject: RE: Draft SEPs State/Local Memo

Larry –

I'd like to talk about timing. Caroline is out today **Ex. 6 Personal Privacy (PP)** and I would really like to get her input if there is time. Do you know what Susan's plan is for sharing with DOJ?

I have reviewed it and think it is excellent but I haven't done a technical check either. I can make time to do that today if necessary but again, would prefer Caroline's expertise on it.

Thank you
Amy

From: Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>
Sent: Wednesday, July 31, 2019 10:54 AM

To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>
Subject: Re: Draft SEPs State/Local Memo

Larry, by my not having given this a "close read," I meant that I wasn't able to do a cross-walk with the applicable portions of the SEP policy (really a technical check), but in my review I didn't see anything that looked incorrect on that front.

Ex. 5 AC/DP

Sent from my iPhone

On Jul 31, 2019, at 10:15 AM, Starfield, Lawrence <Starfield.Lawrence@epa.gov> wrote:

Susan was hoping to send a draft of her memo to Jeff Clark by COB, but it looks like most folks are out or in negotiations today. Will anyone be able to give it a close read today?

Larry

From: Fogarty, Johnpc
Sent: Wednesday, July 31, 2019 8:26 AM
To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>
Cc: Koslow, Karin <Koslow.Karin@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>
Subject: RE: Draft SEPs State/Local Memo

I'm about to head into 2 days of negotiations and can't really give this a close read, but

Ex. 5 AC/DP

From: Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Sent: Tuesday, July 30, 2019 5:30 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Cc: Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>
Subject: RE: Draft SEPs State/Local Memo

Susan,

This is great. It really hits the key points, and does a superb job on the legislative history piece. I had a few editorial suggestions for the group's consideration.

Larry

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From: Bodine, Susan
Sent: Tuesday, July 30, 2019 10:25 AM
To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Cc: Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>
Subject: RE: Draft SEPs State/Local Memo

I did not rebut each point, but hit the highlights. See attached. Comments welcome.

Susan

From: Starfield, Lawrence
Sent: Monday, July 15, 2019 8:27 AM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Cc: Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>
Subject: Re: Draft SEPs State/Local Memo

PRIVILEGED AND CONFIDENTIAL

Rosemarie,

Let's do the best we can.

Ex. 5 AC/AWP/DP, 7(A)

Ex. 5 AC/AWP/DP, 7(A)

Lots to discuss.

Larry

Sent from my iPhone

On Jul 15, 2019, at 7:40 AM, Kelley, Rosemarie <Kelley.Rosemarie@epa.gov> wrote:

Larry -

Given that Caroline Makepeace is out through next Friday and John is tied up with **Ex. 7(A)** for the next couple of days (and Amy is out until Thursday), Karin and I will talk this morning about how we will develop a response and when we can get it done.

Rosemarie

Rosemarie Kelley, Director
Office of Civil Enforcement
OECA

From: Fogarty, Johnpc
Sent: Monday, July 15, 2019 7:24:32 AM
To: Starfield, Lawrence
Cc: Kelley, Rosemarie; Koslow, Karin; Makepeace, Caroline
Subject: Re: Draft SEPs State/Local Memo

I'm in all day negotiations today and tomorrow **Ex. 7(A)** and won't have a chance to look at this until mid-week, unfortunately.

Sent from my iPhone

On Jul 14, 2019, at 6:48 PM, Starfield, Lawrence
<Starfield.Lawrence@epa.gov> wrote:

Here is Jeff Clark's draft memo on SEPs. I haven't read it yet, but wanted to get it to you ASAP. Please let Susan and I know what you think and what next steps you recommend. I read it tonight or in the morning.

Thanks.

Larry

From: Bodine, Susan
Sent: Sunday, July 14, 2019 6:06 PM
To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>;
Traylor, Patrick <traylor.patrick@epa.gov>
Subject: Fwd: Draft SEPs State/Local Memo

Sent from my iPad

Begin forwarded message:

From: "Clark, Jeffrey (ENRD)"
<jbc1@usdoj.gov>
Date: July 14, 2019 at 4:38:27 PM EDT
To: "bodine.susan@epa.gov"
<bodine.susan@epa.gov>
Cc: "Brightbill, Jonathan (ENRD)"
<Jonathan.Brightbill@usdoj.gov>,
"Gelber, Bruce (ENRD)"
<Bruce.Gelber@usdoj.gov>
Subject: Draft SEPs State/Local Memo

Susan, please see the attached.

Ex. 5 AC/DP

Jeff

<ENRD State and Local SEP Memo External Draft
1.docx>

Message

From: Tanimura, Erin [Tanimura.Erin@epa.gov]
Sent: 10/3/2019 6:28:40 PM
To: Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: FW: National Air Enforcement Call
Attachments: 082119 DOJ memo no local state SEPs.pdf; 20181204 DOJ Request to PIP for Financial Docs.pdf; 28 USC 3304 re Fraudulent Transfer_FDCPA Claim.pdf; 20190614 Punch It Complaint FILED.PDF; Ameren remedy decision 9.30.19.pdf

From: Argentieri, Sabrina <argentieri.sabrina@epa.gov>

Sent: Wednesday, October 02, 2019 12:05 PM

To: Rivers, Tahani <Rivers.Tahani@epa.gov>; Chapman, Apple <Chapman.Apple@epa.gov>; Skelley, Dana <Skelley.Dana@epa.gov>; Mastro, Donna <Mastro.Donna@epa.gov>; Messina, Edward <Messina.Edward@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>; Cohen, Eric <cohen.eric@epa.gov>; Mills, Flaire <Mills.Flaire@epa.gov>; Fried, Gregory <Fried.Gregory@epa.gov>; Matthews, Julie <Matthews.Juliane@epa.gov>; Christenson, Kara <Christenson.Kara@epa.gov>; Ortega, Kellie <Ortega.Kellie@epa.gov>; Powell, Keri <Powell.Keri@epa.gov>; Villatora, Liliana <Villatora.Liliana@epa.gov>; Gross, Louise C <gross.louise@epa.gov>; Spiegelman, Nina (Separated 1/2/19) <Spiegelman.Nina@epa.gov>; Welton, Patricia <Welton.Patricia@epa.gov>; Brooks, Phillip <Brooks.Phillip@epa.gov>; Lischinsky, Robert <Lischinsky.Robert@epa.gov>; Stahle, Susan <Stahle.Susan@epa.gov>; Tennenbaum, Susan <Tennenbaum.Susan@epa.gov>; Dykes, Teresa <Dykes.Teresa@epa.gov>; Olivier, Tom <olivier.tom@epa.gov>; Nowell, Valerie <Nowell.Valerie@epa.gov>; Chen, Alexander <Chen.Alex@epa.gov>; Snyder, Doug <Snyder.Doug@epa.gov>; Stoltzfus, Robert <Stoltzfus.Robert@epa.gov>; Palermo, Mark <palermo.mark@epa.gov>; Root, Kathleen <Root.Kathleen@epa.gov>; Lieben, Ivan <Lieben.Ivan@epa.gov>; Chatfield, Ethan <chatfield.ethan@epa.gov>; Froikin, Sara <Froikin.Sara@epa.gov>; Klepp, Robert <Klepp.Robert@epa.gov>; Williams, Melina <Williams.Melina@epa.gov>; Gallagher, Shirin <Gallagher.Shirin@epa.gov>; Belser, Evan <Belser.Evan@epa.gov>; Vergeront, Julie <Vergeront.Julie@epa.gov>; Thompson, Christopher <Thompson.Christopher@epa.gov>; Kulschinsky, Edward <Kulschinsky.Edward@epa.gov>; Adair, Jocelyn <Adair.Jocelyn@epa.gov>; Murray, Julie <Murray.Julie@epa.gov>; LaBoda, Sarah <LaBoda.Sarah@epa.gov>; Meyer, Jonathan <Meyer.Jonathan@epa.gov>; Parrish, Robert <Parrish.Robert@epa.gov>; Burke, Shaun <Burke.Shaun@epa.gov>; Barnett, Cheryl <Barnett.Cheryl@epa.gov>; Tanimura, Erin <Tanimura.Erin@epa.gov>; Edgell, Joe <Edgell.Joe@epa.gov>; Tozzi, Lauren <Tozzi.Lauren@epa.gov>; Kaul, Meetu <Kaul.Meetu@epa.gov>

Cc: HertzWu, Sara <HertzWu.Sara@epa.gov>; Muller, Sheldon <Muller.Sheldon@epa.gov>; Caballero, Kathryn <Caballero.Kathryn@epa.gov>; Spina, Providence <Spina.Providence@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>; Hoang, Anhthu <Hoang.Anhthu@epa.gov>; Sorrell, Virginia <Sorrell.Virginia@epa.gov>; McClintock, Katie <McClintock.Katie@epa.gov>; Livingston, Peggy <Livingston.Peggy@epa.gov>; Patefield, Scott <Patefield.Scott@epa.gov>; Hammond, Lauren <Hammond.Lauren@epa.gov>; Portmess, Jessica <Portmess.Jessica@epa.gov>; Meisenbach, Caitlin <Meisenbach.Caitlin@epa.gov>; Dugan, Brett <Dugan.Brett@epa.gov>; Mia, Marcia <Mia.Marcia@epa.gov>; Vulcain, Dominique <vulcain.dominique@epa.gov>; Shepherdson, Melanie <Shepherdson.Melanie@epa.gov>; Triplett, Eric <Triplett.Eric@epa.gov>; Dixon, Chelsea <Dixon.Chelsea@epa.gov>; Li, Angelica <li.angelica@epa.gov>; Cobb, Brandon <cobb.brandon@epa.gov>; Dean, Abigail <Dean.Abigail@epa.gov>; Scinta, Robert <scinta.robert@epa.gov>; Johnstone, Lauren <Johnstone.Lauren@epa.gov>
Subject: RE: National Air Enforcement Call

National Air Enforcement Call

Thursday, October 3, 2019
2:30 Eastern

AGENDA

Punch-It: This case involves more than 26,447 violations of the “defeat device” prohibition of section 203(a)(3)(B) of the Clean Air Act (“CAA” or the “Act”) by Michael Schimmack, Punch It Performance and Tuning LLC, D N S Enterprises of Florida, Inc., and REI Research Group, Inc. (collectively, “Punch It”) from 2011 through 2017. This case also involves claims under the Federal Debt Collection Procedures Act (“FDCPA”), 38 U.S.C. § 3301 et seq., against REI Research Group, Inc., Mr. Schimmack’s wife (Vanessa Schimmack), and Mr. Schimmack’s sister (Lori Brown). On June 14, the United States filed a complaint in the Middle District of Florida. Lauren Tozzi will provide a summary of the case. Case materials attached.

SEPs/Mitigation Project Update: To the extent possible, Caroline Makepeace will provide a short update on these ever evolving matters. DOJ memo, “Using Supplemental Environmental Projects (“SEPs”) in Settlements with State and Local Governments” attached.

Ameren Remedy Decision: You won’t want to miss Alex Chen’s summary of the excellent decision. Big win for the United States and the environment. Congrats to the Region 7 and DOJ Team! Decision attached.



082119 DOJ
memo no local st...



20181204 DOJ
Request to PIP f...



28 USC 3304 re
Fraudulent Trans...



20190614 Punch It
Complaint FILED...



Ameren remedy
decision 9.30.19...

-----Original Appointment-----

From: Argentieri, Sabrina

Sent: Thursday, January 22, 2015 1:28 PM

To: Rivers, Tahani; Argentieri, Sabrina; Chapman, Apple; Skelley, Dana; Mastro, Donna; Messina, Edward; Zenick, Elliott; Cohen, Eric; Mills, Flaire; Fried, Gregory; Matthews, Julie; Christenson, Kara; Ortega, Kellie; Powell, Keri; Villatora, Liliana; Gross, Louise C; Spiegelman, Nina (Separated 1/2/19); Welton, Patricia; Brooks, Phillip; Lischinsky, Robert; Stahle, Susan; Tennenbaum, Susan; Dykes, Teresa; Olivier, Tom; Nowell, Valerie; Chen, Alexander; Snyder, Doug; Stoltzfus, Robert; Palermo, Mark; Root, Kathleen; Lieben, Ivan; Chatfield, Ethan; Froikin, Sara; Klepp, Robert; Williams, Melina; Gallagher, Shirin; Belser, Evan; Vergeront, Julie; Thompson, Christopher; Kulschinsky, Edward; Adair, Jocelyn; Murray, Julie; LaBoda, Sarah; Meyer, Jonathan; Parrish, Robert; Burke, Shaun; Barnett, Cheryl; Tanimura, Erin; Edgell, Joe; Tozzi, Lauren; Kaul, Meetu

Cc: HertzWu, Sara; Muller, Sheldon; Caballero, Kathryn; Spina, Providence; Sullivan, Tim; Hoang, Anhthu; Sorrell, Virginia; McClintock, Katie; Peggy Livingston; Patefield, Scott; Hammond, Lauren; Portmess, Jessica; Meisenbach, Caitlin; Dugan, Brett; Mia, Marcia; Vulcain, Dominique; Shepherdson, Melanie; Eric Triplett (Triplett.Eric@epa.gov); Dixon, Chelsea; Li, Angelica; Cobb, Brandon; Dean, Abigail; Scinta, Robert; Johnstone, Lauren

Subject: National Air Enforcement Call

When: Thursday, October 3, 2019 2:30 PM-3:30 PM (UTC-05:00) Eastern Time (US & Canada).

Where: (202) 991-0477; Conference ID: 1650623

2015 Monthly Air Enforcement Call. Agenda will be distributed prior to each call.

I invite you to send me items for the monthly call at any time. I will include the topic on the agenda for the following monthly call. Agenda items include any topic related to CAA enforcement you think would interest the group, including, but not limited to, case development issues, litigation updates, case resolutions, court decisions, rulemakings, applicability determinations, and inquiries seeking feedback from our national CAA enforcement experts.



U.S. Department of Justice
Environment and Natural Resources Division

Assistant Attorney General
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Telephone (202) 514-2701

TO: ENRD Deputy Assistant Attorney Generals and Chiefs of the Environmental Enforcement, Environmental Defense, Environmental Crimes, Natural Resources, and Wildlife & Marine Resources Sections

CC: Chiefs of All Remaining ENRD Sections

FROM: Jeffrey Bossert Clark, Assistant Attorney General

SUBJECT: Using Supplemental Environmental Projects (“SEPs”) in Settlements with State and Local Governments

DATE: August 21, 2019

In November 2018, the Attorney General announced a new policy governing civil consent decrees and settlement agreements with state and local governments.¹ Among other things, the Attorney General directed that consent decrees “must not be used to achieve general policy goals or to extract greater or different relief from the defendant than could be obtained through agency enforcement authority or by litigating the matter to judgment.” Nov. 2018 Memo at 5. The Policy was structured in part to ensure that the authority to determine state and local policy goals remains with democratically accountable state and local institutions. *Id.* at 2-3. Our understanding from the Associate’s Office is that the converse is also true: namely, a related goal of the Policy was to avoid encouraging state and local governments to use federal consent decrees to circumvent any legal constraints they may face when they engage in new undertakings, such as the need to pass new legislation, issue new municipal ordinances, or obtain requisite funding.

This Policy has important implications for the use of Supplemental Environmental Projects (“SEPs”) in settlements with state and local governments because, by definition, SEPs are projects agreed to in settlements that *go beyond* what is required under federal, state, or local laws. *See* U.S. Environmental Protection Agency Supplemental Environmental Projects Policy 2015 Update,

¹ *See* Memorandum from the Attorney General, Principles and Procedures for Civil Consent Decrees and Settlement Agreements with State and Local Governmental Entities (Nov. 7, 2018) (“Nov. 2018 Memo” or “Policy”), *available at* <https://www.justice.gov/opa/press-release/file/1109621/download>. Although the Deputy Attorney General or Associate Attorney General may grant exceptions to the Policy’s substantive requirements, any exceptions are not intended to swamp the rule.

at 6 (Mar. 10, 2015) (“2015 SEP Policy”).² Because SEPs exceed what is required by law, proposed consent decrees and settlements containing them are generally precluded by Section III.C.5 of the Policy, absent approval of an exception under Section III.C.

Nevertheless, it has been argued that SEPs categorically should be exempted from this Policy because Congress allegedly (and implicitly) approved of their use in America’s Water Infrastructure Act of 2018, P.L. 115-270, 132 Stat. 3765, which amended the Clean Water Act to authorize municipalities operating sewer and stormwater systems to undertake an integrated-planning process to streamline Clean Water Act compliance obligations. It also has been argued that the Policy itself excludes SEPs from its substantive requirements because EPA will agree to them in its non-judicial administrative settlements.

For the reasons explained herein, these arguments that SEPs should be exempted from the November 2018 Policy are unpersuasive. Especially in light of the statutes referenced in Background Section A, for a congressional enactment to be read as endorsing SEPs, Congress’ intent to delegate its exclusive constitutional power of the purse needs to be clearly and unmistakably expressed. And, as explained below, America’s Water Infrastructure Act of 2018 does not demonstrate a clear intent to authorize SEPs in enforcement actions involving municipal sewers. Nor do the terms of the Policy itself exclude SEPs from the Policy’s substantive requirements. SEPs involving state and local government defendants therefore unambiguously fall within the core of the Attorney General’s November 2018 Policy, and are precluded, absent the granting of an exception based on other considerations.

BACKGROUND

A. Legislation protecting Congress’ exclusive power of the purse: the Miscellaneous Receipts and Anti-Deficiency Acts

Violations of federal environmental laws such as the Clean Water Act often result in the assessment of monetary penalties in enforcement actions against the violator. The Clean Water Act itself does not specify where monetary penalties are to be paid (except for penalties received under Section 311 that flow into the Oil Liability Trust fund). But several courts have held that monetary penalties received for Clean Water Act violations must be deposited in the United States Treasury as miscellaneous receipts. *See, e.g., Public Interest Research Group of New Jersey v. Powell Duffryn Terminals, Inc.*, 913 F.2d 64, 82 (3d Cir. 1990) (collecting cases).³ Once

² <https://www.epa.gov/sites/production/files/2015-04/documents/sepupdatedpolicy15.pdf> (“SEPs are projects or activities that *go beyond* what could legally be required in order for the defendant to return to compliance, and secure environmental and/or public health benefits in addition to those achieved by compliance with applicable laws.”) (emphasis added). Although a precursor policy was first issued in 1984, EPA first issued its SEP policy in 1991. The policy was substantially revised in 1995 (interim revised policy) and 1998 (final revised policy), and last revised in 2015.

³ Legislative history is to the same effect. *See* S. Rep. No. 92–414, 92d Cong., 2d Sess. (1972), *reprinted in* 1972 U.S.C.C.A.N. 3668, 3745, 1971 WL 11307 (“any penalties imposed would be deposited as miscellaneous receipts and not be recovered by the complainant.”).

deposited, the Constitution gives Congress the exclusive authority in the first instance to determine whether and how to spend the monies. *See* Article I, Section 8, Clause 1 (Taxing and Spending Clause); Article I, Section 9, Clause 7 (Appropriations Clause).

To protect its constitutional power of the purse against intrusion from the Executive Branch, Congress has enacted statutes such as the Miscellaneous Receipts Act and Anti-Deficiency Act. *See generally* Todd David Peterson, *Protecting The Appropriations Power: Why Congress Should Care About Settlements at the Department of Justice*, 2009 B.Y.U. L. REV. 327, 332-52 (2009) (explaining how prior attempts to evade Congress' appropriations authority led Congress to enact the Miscellaneous Receipts Act and the Anti-Deficiency Act).⁴ The Miscellaneous Receipts Act provides that government officials "receiving money for the Government from any source shall deposit the money in the Treasury." 31 U.S.C. § 3302(b). The Anti-Deficiency Act prohibits government officials from expending funds (or incurring financial obligations) in excess of appropriations. *See* 31 U.S.C. § 1341.

B. Office of Legal Counsel Opinion on the Effect of 31 U.S.C. § 484 on the Settlement Authority of the Attorney General

The Attorney General has broad discretion when settling litigation, including the discretion to agree to settlement terms which a court would not have the power to order.⁵ In exercising this broad authority, the Attorney General will in many instances defer to the policy judgments of the client agency.⁶ But, of course, the Attorney General's settlement authority must be exercised consistent with any restrictions imposed by Congress or the Constitution.⁷

In 1980, the Office of Legal Counsel (OLC) issued an opinion concluding that a proposed settlement in *In re Complaint of Steuart Transportation Co.* (E.D. Va. No. 76-697-N), violated 31 U.S.C. § 484, which (as a predecessor statute to the Miscellaneous Receipts Act) required all money received for the use of the United States be deposited in the Treasury.⁸ OLC opined that the requirements of § 484 must be broadly applied, noting that the Government Accountability

⁴ Mr. Peterson was an official in the Clinton Administration's OLC. Since the Clinton-era OLC is the one that first began to greenlight SEPs (in effect), Mr. Peterson was apparently a dissenter from that view.

⁵ *See The Attorney General's Role as Chief Litigator for the United States*, 6 Op. O.L.C. 47, 59-60 (1982), available at <https://www.justice.gov/sites/default/files/olc/opinions/1982/01/31/op-olc-v006-p0047.pdf>.

⁶ *Id.* at 55.

⁷ *See Authority of the United States to Enter Settlements Limiting the Future Exercise of Executive Branch Discretion*, 23 Op. O.L.C. at 136, 140 (1999), available at <https://www.justice.gov/file/19516/download>.

⁸ *See Effect of 31 U.S.C. § 484 on the Settlement Authority of the Attorney General*, 4B Op. O.L.C. 684, 684-85 (1980), available at https://www.justice.gov/olc/opinions/?P%5B0%5D=field_opinion_post_date%3A1980&P%5B1%5D=field_opinion_post_date%3A1980-06.

Office (GAO) finds exceptions to the application of that statute “only when supported by a clear expression of congressional intent.” *Id.* at 686-87.

Under the terms of the proposed settlement in *Steuart*, the state and federal governments would share entitlement to damages for the death of waterfowl, which would be donated by the defendant to a waterfowl organization. *Id.* at 685. In its opinion, OLC offered theories for defending the settlement as proposed, including a theory that under the terms of the proposed settlement no money was received. *Id.* at 687. But OLC rejected the no-money-received theory, finding it insufficient to override the legislative mandate of § 484, stating that “the fact that no cash actually touches the palm of a federal official is irrelevant for purposes of § 484, if a federal agency could have accepted possession and retains discretion to direct the use of the money.” *Id.* at 688. OLC concluded that “money available to the United States and directed to another recipient is constructively ‘received’ for the purposes of § 484.” *Id.* OLC therefore concluded the statute barred the proposed settlement. *Id.*

C. Supplemental Environmental Projects (SEPs)

Most federal actions for failure to comply with the Nation’s environmental laws, including the Clean Water Act, are resolved through settlement agreements or consent decrees. Those settlements or decrees usually stipulate the amount of the penalty. The United States Environmental Protection Agency (“EPA”) and DOJ determine the amount they are willing to settle for by considering several factors, including whether the alleged violator has agreed to perform SEPs. *See* 2015 SEP Policy at 21-24. Under EPA’s SEP Policy, an alleged violator will generally (all other things being equal) pay a lower civil penalty than it would otherwise pay by voluntarily (as part of a settlement) agreeing to undertake an environmentally beneficial project that is closely related to the violation being resolved, but goes beyond what is required under federal, state, or local laws. *Id.* at 21.

EPA’s use of SEPs to reduce what it would otherwise demand in negotiations as a monetary penalty to the government (and disputes over the device’s propriety) is long-running. In 1992, the GAO concluded that some SEPs were unlawful because they had no nexus to the violation at issue, and instead allowed the agency to carry out the agency’s other statutory goals, thereby permitting the agency to improperly augment its appropriations for these other purposes, in circumvention of the congressional appropriations process. *See* Peterson, *supra*, at 352-54. Following GAO’s opinion, until the issuance of EPA’s final revised SEP policy in 1998, EPA worked with ENRD and OLC to impose several limitations on SEPs with the intention of avoiding clashes with the Appropriations Clause and the Miscellaneous Receipts Act. *Id.* at 354-57. These limitations include requirements that any SEP have a nexus to the violation at issue, but not be otherwise required by law. EPA’s self-imposed limitations also include specific restrictions against augmenting appropriations and a prohibition on EPA managing or controlling any funds. *See* 2015 SEP Policy at 7-11. (But note the conceptual similarity to the no-money-received theory that OLC rejected in 1980.) EPA also does not allow cash donations to third-party groups of the type found inappropriate in the 1980 OLC opinion. *See* 2015 SEP Policy at 17.

Despite these limitations, SEPs remain controversial. In 2017, the United States House of Representatives passed the Stop Settlement Slush Funds Act. *See* H.R. 732, 115th Cong., 1st Sess.

(2017). No similar bill passed the United States Senate. While the bill did not become law, it would have prohibited government officials from entering into settlements that provide for payments or loans to persons other than the United States, except for payments that directly remedy the actual harm caused by the violation at issue (e.g., restitution). *See* H.R. Rep. 115-72, at 2 (2017), 2017 WL 1185293. The House Committee Report summarizes the legal disputes underlying SEPs, which both the majority and dissenting members contemplated could fall within the bill's prohibition on third-party payments. *Id.* at 5-6, 37-44. The dissenting members described SEPs as beneficial projects that the bill would jeopardize if in-kind payments such as those in SEPs were interpreted as "payments." *Id.* at 37-44. On the other hand, the majority described SEPs as Miscellaneous Receipts Act circumvention devices, *id.* at 5-6, and rejected amendments to the bill that would have exempted SEP-like provisions in settlements addressing indirect harms from violations of certain environmental laws, *id.* at 14-15.⁹ One failed amendment to the bill would have authorized CWA-side SEPs and another failed amendment would have authorized CAA-side SEPs. *See id.*

D. 2018 Clean Water Act Amendments: Integrated Plans

Entities subject to monetary penalties under the Clean Water Act include municipalities and other local governmental entities that own and operate wastewater treatment plants and sewer systems. To avoid monetary penalties, these entities must comply with numerous requirements from distinct provisions of the Act, which in totality can have tremendous impacts on municipal operations and the community's financial health. To address these concerns, EPA, in 2012, adopted a policy that allows municipalities to design an "integrated plan," allowing municipalities to collect up all applicable requirements in one place and to prioritize them in a manner that seeks to maximize the environmental benefit from the available resources.¹⁰

In the portion of the integrated planning policy discussing enforcement actions against municipalities for noncompliance with the Act, the EPA 2012 Policy notes that "[a]ll or part of an integrated plan may be able to be incorporated into the remedy of a federal or State enforcement action." EPA 2012 Policy at 7. This includes "[e]nvironmentally beneficial projects that are

⁹ In June 2017, the Attorney General announced a policy that, by its terms, largely tracks the Stop Settlement Slush Funds Act by prohibiting third-party payments or loans in settlements to non-governmental entities. *See* <https://www.justice.gov/opa/pr/attorney-general-jeff-sessions-ends-third-party-settlement-practice>. The use of SEPs in settlements must be consistent with the Attorney General's June 2017 policy, as well as the Division's January 2018 memorandum on "Settlement Payments to Third Parties in ENRD cases." *See* <https://www.justice.gov/enrd/page/file/1043726/download>. I am considering revocation of (or revisions to) the January 2018 memorandum to make it more closely adhere to the November 2018 Policy and its connection to the legislative aims of the Stop Settlement Slush Funds bill. Revisions may include a clarification that the prohibition in the Attorney General's 2017 policy on "payments" to third parties includes in-kind payments such as those in SEPs.

¹⁰ *See* EPA Memorandum on Integrated Municipal Stormwater and Wastewater Planning Approach Framework (June 5, 2012) ("EPA 2012 Policy"), *available at* https://www3.epa.gov/npdes/pubs/integrated_planning_framework.pdf

identified in an integrated plan and which the municipality is not otherwise legally required to perform” as long as the project is “consistent with EPA’s Supplemental Environmental Projects Policy.” *Id.*

While integrated planning was intended to assist municipalities in reducing their economic burdens, many communities were not able to take advantage of the integrated planning process because of a lack (actual or perceived) of statutory authorization for EPA to use the process. Thus, in 2018, Congress enacted America’s Water Infrastructure Act (“2018 Clean Water Act amendments”), which, among other things, added Sections 309(h) and 402(s) to the Clean Water Act to authorize the use of the integrated planning process. *See* 33 U.S.C. § 1319 (Section 309), and § 1342 (Section 402). The President signed the amendments into law on January 4, 2019.

The new law defines an integrated plan as a plan developed under EPA’s 2012 Policy. *See* 33 U.S.C. § 1342(s)(1). In general, the law requires that each municipality be informed by their federal or state permitting authority that it has the opportunity to develop an integrated plan that can be incorporated into its Clean Water Act permit. *See id.* § 1342(s)(2). The new law also allows integrated plans to be developed by municipalities in enforcement actions, and municipalities that develop integrated plans can request that their enforcement orders or decrees be modified based on the provisions in the integrated plans. *See* 33 U.S.C. § 1319(h).

DISCUSSION

The use of SEPs in consent decrees with state and local governments contravenes the prohibition on using consent decrees to “extract greater or different relief from [a state or local government] than could be obtained through agency enforcement authority or by litigating the matter to judgment.” *See* Nov. 2018 Memo at 5. By definition, a SEP goes beyond what is required under federal, state, or local laws, *see* 2015 SEP Policy at 6, and thus exceeds what could be obtained through agency enforcement authority or by litigating a matter to judgment. A clearer example of a form of relief that falls within the prohibition in the November 2018 Policy is difficult to imagine.

I. The 2018 Clean Water Act amendments do not justify creating an exception for SEPs in enforcement actions against state or local governments.

There is an argument that Congress, when it enacted the 2018 Clean Water Act amendments, approved the use of SEPs when DOJ and EPA settle enforcement actions. As the argument goes, because the new law defines an integrated plan with reference to the EPA 2012 Policy and one provision of that policy states that SEPs included in an integrated plan may be incorporated into an enforcement-action remedy, Congress intended to allow the use of SEPs in enforcement actions.

Initially, it should be noted that, at most, the 2018 amendments would authorize only SEPs in the limited context of an enforcement action involving a municipal sewer. It would not authorize the use of SEPs in consent decrees with state and local governments for other purposes. But even in the limited context of municipal sewer systems, the argument that Congress authorized the use of SEPs in enforcement actions is unpersuasive.

SEPs are debated devices that many members of Congress and academic commentators view as mechanisms for sidestepping the power of the purse. *See* H.R. Rep. 115-72, at 5-6. As discussed below, the language of the 2018 Clean Water Act amendments is far from clear. Any claim that these amendments somehow address SEPs must be supported by a clear statement from Congress, for two reasons. First, SEPs can be seen as implicating Congress' constitutional power over appropriations. Under this view, congressional enactments should not be viewed as authorizing the use of SEPs to reduce the monetary penalties that might otherwise flow into the fisc unless there is a clear statement of Congress' intent to do so.¹¹ Furthermore, a reading of the 2018 Clean Water Act amendments that somehow overrides the November 2018 Policy would intrude on the authority of the Attorney General to control and resolve litigation. Although Congress can constrain this authority, it should again be expected to speak clearly if it is attempting to do so.

While the first instance of the clear statement rule was handed down to guide interpretation of statutes that significantly alter the “‘usual constitutional balance between the States and the Federal Government,’” *Gregory v. Ashcroft*, 501 U.S. 452, 460-61 (1991) (quoting *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 242 (1985)), the rule also has been applied to statutes that significantly alter the constitutional balance between Congress and the Executive. *See, e.g., Armstrong v. Bush*, 924 F.2d 282, 289 (D.C. Cir. 1991). The need for a clear statement of congressional intent to protect the power of the purse is especially apparent in view of the Miscellaneous Receipts Act and the Anti-Deficiency Act—two statutes that Congress found it necessary to enact because of past attempts to dilute the legislature's exclusive appropriations power.¹² Indeed, OLC has noted that GAO also finds exceptions to Miscellaneous Receipts Act “only when supported by a clear expression of congressional intent.” 4B Op. O.L.C. at 686-87. Thus, if Congress wishes to delegate its power of the purse, it must make its intention to do so ‘unmistakably clear in the language of the statute.’” *Gregory*, 501 U.S. at 460-61 (quoting *Atascadero State Hosp.*, 473 U.S. at 242); *see also Solid Waste Agency of N. Cook Cnty. v. U.S. Army Corps of Eng'rs*, 531 U.S. 159, 172-73 (2001) (applying a clear statement rule to assess the propriety of an administrative interpretation of the Clean Water Act invoking the outer limits of Congress' Commerce Clause powers, because it would have altered the traditional federal-state balance of powers over land and water use).

A similar, but somewhat distinct basis for this conclusion is that Congress is not understood

¹¹ For example, clear statements to use funds to continue the construction of border barriers by the Department of Homeland Security exist in (among other places) the: (1) Treasury Forfeiture Fund (31 U.S.C. § 9705); (2) Department of Defense's counter-drug support authority (10 U.S.C. § 284); and (3) authority to reallocate funding from military construction projects, made available through the President's clear authority to issue a national emergency declaration (10 U.S.C. § 2808).

¹² The application of the clear statement rule is also appropriate as a tool to test the argument that the 2018 Clean Water Act amendments effectively exempt SEPs in municipal-sewer settlements from the application of a broad-based Department of Justice policy intended to preserve the constitutional state-federal balance and prevent efforts that would effectively allow States or localities to skirt their own limited grants of authority from their legislatures or ordinance-making bodies.

to intrude on the authority of the Attorney General to control settlements in the absence of a clear statement. Only “explicit statements” by Congress will be construed to constrain the Attorney General’s broad control over settlements. *See* 6 Op. O.L.C. at 60. “In general . . . limits on the Attorney General’s presumptively broad settlement power must take the form of clear statutory directives in order to be effective.” *See* 23 Op. O.L.C. at 140. Thus, the 2018 Clean Water Act amendments should not be construed to intrude on the Attorney General’s authority to impose limitations and restrictions on Departmental settlements through the November 2018 Policy in the absence of a clear statement in those amendments evincing such an intent.

The 2018 Clean Water Act amendments do not provide a clear statement. In fact, the amendments do not refer to SEPs at all. While the law references EPA’s 2012 Policy on integrated planning, that policy is not about SEPs *per se*, but about integrated plans. The 2012 Policy primarily discusses the principles underlying integrated plans and describes their elements. *See* EPA 2012 Policy at 2-6. The EPA 2012 Policy contains only one reference to SEPs and does not discuss them in detail. *Id.* at 7. Instead, that policy includes only a hyperlink in a footnote to an outdated version of EPA’s SEP Policy. *Id.* at 7 n.4 (linking to the 1998 version of EPA’s SEP policy).

Without a clearer statement from Congress, it is untenable to conclude that Congress intended in the 2018 Clean Water Act amendments to authorize the use of SEPs in enforcement actions uniquely involving municipal sewers (and it especially cannot be inferred that Congress intended to adopt the 2015 EPA SEP policy, which did not exist at the time of the 2012 EPA memo on integrated planning that the 2018 Clean Water Act amendments reference). In other words, Congress does not “hide elephants in mouseholes.” *Gonzales v. Oregon*, 546 U.S. 243, 267 (2006) (internal citation and quotation omitted). If Congress had intended to authorize the use of controversial miscellaneous-receipt-circumvention devices such as SEPs (the elephant), it would not have done so without mentioning SEPs by name. Instead, two layers removed from the statute, Congress merely referred to an integrated planning policy (the first mousehole) that does not discuss SEPs, but simply refers to another policy discussing them (the mousehole within a mousehole). It would therefore be inappropriate to use this legislation to create an exception to the unambiguous directive of the Attorney General prohibiting consent decrees that extract relief from a municipality that could not be obtained by litigating the matter to judgment.

II. The 2018 Clean Water Act amendments do not authorize retroactive permit amendments.

Even assuming *arguendo* that Congress intended to approve of the use of SEPs in some fashion involving municipal sewer matters, it did so only in situations where the municipality already has an integrated plan and permit that includes SEPs at the time of a violation. The Clean Water Act amendments do not authorize EPA to amend a violator’s permit retroactively for the purpose of including SEPs in the permit so the SEPs can thereby be included in a consent decree (as some have argued). At best, as a textual matter, the 2018 amendments authorize EPA to include SEPs from an approved integrated plan in a municipality’s *permit*, 33 U.S.C. § 1342(s)(2), and if so included, the SEPs can be incorporated into consent decree *modifications*, *id.* § 1319(h).

“The starting point for [the] interpretation of a statute is always its language.” *Community*

for Creative Non-Violence v. Reid, 490 U.S. 730, 739 (1989); *see also Williams v. Taylor*, 529 U.S. 420, 431 (2000) (“We start, as always, with the language of the statute.”). The newly added Section 402(s) states, in relevant part:

(s) Integrated plans

(1) Definition of integrated plan

In this subsection, the term “integrated plan” means a plan developed in accordance with the Integrated Municipal Stormwater and Wastewater Planning Approach Framework, issued by the Environmental Protection Agency and dated June 5, 2012.

(2) In general

The Administrator (or a State, in the case of a permit program approved by the Administrator) shall inform municipalities of the opportunity to develop an integrated plan that may be incorporated into a permit under this section.

33 U.S.C. § 1342(s)(2).

And the newly added Section 309(h) reads as follows:

(h) Implementation of integrated plans

(1) In general

In conjunction with an enforcement action under subsection (a) or (b) relating to municipal discharges, the Administrator shall inform a municipality of the opportunity to develop an integrated plan, as defined in section 1342(s) of this title.

(2) Modification

Any municipality under an administrative order under subsection (a) or settlement agreement (including a judicial consent decree) under subsection (b) that has developed an integrated plan consistent with section 1342(s) of this title may request a modification of the administrative order or settlement agreement based on that integrated plan.

33 U.S.C. § 1319(h).

As the above text demonstrates, the statutory provisions instruct EPA to inform municipalities of the “opportunity to develop an integrated plan that may be incorporated into a permit,” *id.* § 1342(s)(2), either before a violation under Section 402(s)(2) or after a violation in

the context of an enforcement action under Section 309(h)(1). If a municipality, however, has not developed an integrated plan that contains SEPs to include in its permit or consent decree modification, then the 2018 Clean Water Act amendments do not authorize the SEPs.

If during the course of an enforcement action a municipality develops a plan with SEPs to include in its permit, then Section 309(h)(2) provides the city with the opportunity to “request a modification of the administrative order or settlement agreement based on that integrated plan.” *Id.* § 1319(h). At best, this would allow the use of SEPs in consent decrees for new violations going forward. This prospective interpretation might be seen as harmonizing the provisions of the 2018 Clean Water Act amendments with the Miscellaneous Receipts Act. *See Nat’l Ass’n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 666 (2007) (interpreting statutes to produce the harmonious result). But such an interpretation remains hypothetical at the moment and how it would surmount the hurdles of the applicable clear statement rules (i.e., as to delegations of Congress’ appropriations or disturbances of the Attorney General’s settlement powers) would need to be analyzed in the future if the necessary steps under Section 309(h)(2) are followed.

Taking the argument an additional step, one might also argue that this “request a modification” language—in combination with the language in Section 309(h)(1) allowing municipalities the opportunity to develop an integrated plan “[i]n conjunction with an enforcement action”—authorizes EPA to *retroactively amend* the permit to include a municipality’s proposed SEPs in a consent decree resolving the enforcement action for its past violations. Not so.

While SEPs included in an integrated plan that is developed in an enforcement action may be relevant to new violations going forward, the newly added SEPs cannot retroactively alter the permitting regime against which any current violations based on the legal *status quo ante* are assessed. Section 309(h)(2) allows modifications of consent decrees based on newly developed integrated plans, but it would be a mistake to view those modifications as allowing a reduction in penalties for a violation of the original permit, at least not without yet another type of clear statement from Congress. “Retroactivity is not favored in the law.” *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988). It is therefore presumed that agencies do not have the authority to promulgate retroactive rules unless that power is conveyed by Congress in express terms. *Id.*¹³ In the same light and consistent with the clear statement rule expressed above, it should be presumed that agencies do not have authority to retroactively amend a permitting regime in a

¹³ In APA terms a “permit” is a “license,” 5 U.S.C. § 551(8) and licenses are “orders,” *id.* § 551(6). Furthermore, agency processes for the formulation of orders are “adjudications.” *Id.* § 551(7). And adjudications, of course, are typically understood to have retrospective effect. *See, e.g., Harper v. Virginia Dep’t of Taxation*, 509 U.S. 86, 94 (1993). But licenses are a unique form of adjudications and licenses inherently have *prospective effect*. Unless and until one receives a driver’s license, for instance, one cannot lawfully drive. *See also* BLACK’S LAW DICTIONARY (10th ed. 2014) (emphasis added) (defining “license” as “1. A privilege granted by a state or city upon the payment of a fee, the recipient of the privilege *then being authorized to do some act or series of acts that would otherwise be impermissible* . . . 2. A permission, usu. revocable, to commit some act that would otherwise be unlawful . . . [for example, a permit for] hunting game.” To complete the analogy, an 18 year-old first receiving a driver’s license would not, upon receipt of that authorization, find any violations for illegally driving back when the minor was age 13 expunged.

manner that does not authorize the underlying offending conduct. This is especially true where retroactive permit amendment can be seen as diverting funds from the United States Treasury without congressional authorization. As discussed above, Congress has not spoken clearly on any of these issues.

III. SEPs cannot be extracted through agency enforcement authority and thus fall within the substantive requirements of the November 2018 Policy.

As mentioned, the November 2018 Policy, among other things, prohibits consent decrees that “extract greater or different relief from the defendant than could be obtained through agency enforcement authority or by litigating the matter to judgment.” *See* Nov. 2018 Memo. at 5. It has recently been argued that this language excludes SEPs from the Policy because SEPs allegedly are part of EPA’s “agency enforcement authority.” This argument is flawed.

First, this argument misunderstands that the term “agency” as used in the Policy refers to the Department of Justice, and not to outside agencies such as EPA. By its terms, the Policy is an internal document only “directed at Department components and employees.” Nov. 2018 Memo at 2 n.3. Thus, “agency enforcement authority” is referring to authority over matters of civil law where the Department is the civil enforcement agency, which is the case, for instance, in antitrust matters. *See, e.g.*, 15 U.S.C. § 1311(e) (under the Antitrust Civil Process Act the “term ‘antitrust investigator’ means any attorney or investigator employed by the Department of Justice who is charged with the duty of enforcing or carrying into effect any antitrust law”).

Even if the term “agency” in this provision pertained to outside agencies such as EPA, such a revelation still would not mean that SEPs fall outside the terms of the November 2018 Policy. EPA lacks the enforcement authority to extract a SEP from a defendant in any setting. This is true whether that setting is an administrative or a judicial one. The term “extract” typically indicates that something is forcibly taken “by much effort from someone unwilling.” *See Extract*, MERRIAM-WEBSTER DICTIONARY ONLINE (2019).¹⁴ But SEPs are defined as *voluntary* projects that “go beyond what could be legally required” under the law. *See* 2015 SEP Policy at 1, 6. By design, SEPs exceed the relief that EPA forcibly could extract from an unwilling defendant through its enforcement authority. Moreover, the phrase “could be obtained through agency action” must be read *in pari materia* with the subsequent phrase “by litigating the matter to judgment” to refer to relief that can be achieved directly through final adjudication of an administrative action. The phrase “could be obtained through agency action” does not cover relief that can be procured only indirectly through settlement. SEPs therefore fall within the terms of the November 2018 Policy.

Finally, particularly in light of the important public policy considerations underlying the Policy discussed in the subsequent section of this document, it is untenable to read the “agency enforcement provision” of the November 2018 Policy as permitting a consent decree to extract relief from a state or local government that otherwise has no basis in federal, state, or local law. If an outside agency cannot extract the sought-after relief in an administrative proceeding against a state or local government, then the Department cannot extract such relief in a consent decree either.

¹⁴ Available at <https://www.merriam-webster.com/dictionary/extract>.

IV. Sound public policy generally favors disapproving of SEPs in cases against governmental entities, pending my broader review of the SEP Policy.

The Attorney General's November 2018 Policy promotes respect for local democratic processes, ensuring that local officials are held accountable for using local taxpayer funds on otherwise unrequired projects, without clear authorization in state or municipal law to do so. If state or local officials want certain projects undertaken in their communities, they should seek authorization through local democratic processes rather than by acquiescing in a consent decree with a federal agency that is supervised by a federal court.¹⁵ SEPs could intrude on state and local accountability, by allowing the Executive Branch to commit state and local taxpayers to funding projects that are not otherwise required by their laws. They also give oversight of these voluntary projects to a federal court, and subject SEP violations to the contempt power. There also is the potential that state or local officials could commit to projects that are contrary to the express or implied will of the state or local legislative branches, respectively.

On the other hand, it has been argued that SEPs do not deprive elected representatives of the people control of their government, because SEPs are discrete projects representing a small component of any overall settlement in terms of duration, dollar amounts and scope of work. It also has been argued that SEPs are an important enforcement tool in settlements with governmental entities that are highly resistant to paying penalties; that the inability to do SEPs may well impede settlements; and that SEPs are highly favored by the localities that are the subject of the enforcement action, because they result in lower penalties and bring benefits to the local community. I also recognize that before the Attorney General announced the November 2018 Policy significant effort was expended negotiating for SEPs in settlements and consent decrees.

Taking these competing concerns into consideration, and pending my broader review of the SEP policy, SEPs in cases against governmental entities should be subject to close, case-by-case scrutiny if EPA wishes to pursue an exception to the Section III.C.5 restriction under the November 2018 Policy in any particular situation. SEPs for which approval will be sought in this interim period should comport with the following limitations, in addition to those currently in the Attorney General's November 2018 Policy, the Attorney General's 2017 policy on payments to third parties, and existing SEP and all other policies:

1. The SEPs must be discrete projects representing a small component of the overall settlement in terms of duration, dollars and scope of work.
2. The SEPs should be included only as a matter of last resort. For SEPs negotiated *before* the issuance of the November 2018 Policy, any memorandum requesting authorization of a settlement that includes SEPs must demonstrate that the previously negotiated SEPs cannot be removed from the nearly completed agreement without jeopardizing

¹⁵ This also ensures that, if such a state law were to pass authorizing the project that a SEP would otherwise embrace, such enactments would in many instances not be enforceable in federal court (absent diversity jurisdiction and waiver of Eleventh Amendment immunity) but only in the courts of the applicable state sovereign. *Cf. Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984) ("it is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law.").

the agreement or harming the interests of the United States. For SEPs negotiated *after* issuance of the November 2018 Policy, any memorandum requesting authorization of a settlement that includes SEPs must demonstrate that the settlement would not be possible without the inclusion of SEPs.

3. The SEPs should provide broad benefits to the community, and not individuals.
4. The governmental defendant should certify that the SEPs do not violate any direct or implied restriction imposed by local, state or federal law.

Even if the proposed SEPs satisfy these limitations, there is no guarantee that I will recommend approval of a settlement with a state or local government that includes SEPs to other officials in the Department. SEPs easily fall within the plain terms of the prohibition set out in Section C.III.5 of the Policy. Although I will attempt to remain open to approving of SEPs in some situations pending my broader review of SEPs (with due consideration given to SEPs negotiated before the November 2018 Policy was announced), exceptions to the Policy are meant to be rare because of the important considerations underlying the Policy which are intended to achieve the appropriate constitutional balance between federal and state governments and ensure accountability at all levels of government.

Further, limiting the use of SEPs in consent decrees promotes respect for the constitutional balance between Congress and the Executive. SEPs can be seen as challenging the congressional power of the purse by, in essence, redirecting funds from the United States Treasury in exchange for projects that Congress has not approved. Perhaps if asked, Congress would authorize funds for diesel emission reduction projects, to take one example. *See* 42 U.S.C. § 16138 (authorizing EPA to accept diesel emissions reduction SEPs). But Congress may also prefer to spend those funds on, say, a new aircraft carrier or on ending the opioid epidemic. Absent a clearly expressed intention from Congress to delegate money-redirection authority to the Executive Branch, *see supra* n.11, Congress' wishes should be respected.

The bottom line is that Congress has not expressly authorized the use of SEPs, either generally or specifically, in Clean Water Act enforcement actions against municipalities operating sewer systems. In the absence of congressional approval, there are compelling legal and policy reasons militating against the use of SEPs in settlements or consent decrees with state and local governments. There is therefore no reason to create a broad exemption from the Attorney General's unambiguous November 2018 Policy for SEPs.¹⁶

¹⁶ ENRD can make two simple points to explain the policy announced herein: (1) declining to negotiate for SEPs merely leaves Congress' prerogatives to decide how to spend money contained in the fisc undisturbed; and (2) if Congress wants to delegate to the Executive Branch the power to negotiate for and settle for SEPs, it can do so as long as (a) it provides a clear statement of its intent to do so, and (b) it specifies the standard "intelligible principle" necessary to guide Executive action under a delegation of congressional power. *See Whitman v. Am. Trucking Associations*, 531 U.S. 457, 472 (2001).

Message

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Subject: draft

Caroline – I need to turn to the examples; the last paragraph needs work **Ex. 5 Attorney Client (AC)**

Ex. 5 AC/DP

Appointment

From: Porter, Amy [Porter.Amy@epa.gov]
Sent: 4/29/2019 4:14:48 PM
To: Makepeace, Caroline [Makepeace.Caroline@epa.gov]; Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]
Subject: FW: SEP discussion on Monday
Location: call-in number

Start: 4/29/2019 9:00:00 PM
End: 4/29/2019 10:00:00 PM
Show Time As: Tentative

-----Original Appointment-----

From: Dworkin, Karen (ENRD) <Karen.Dworkin@usdoj.gov>
Sent: Monday, April 29, 2019 11:33 AM
To: karen.dworkin@usdoj.gov; Starfield, Lawrence; bruce.gelber@usdoj.gov; Porter, Amy
Cc: Douglas, Nathaniel (ENRD); Snow, Corinne (ENRD); Mariani, Tom (ENRD); Kelley, Rosemarie
Subject: SEP discussion on Monday
When: Monday, April 29, 2019 5:00 PM-6:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: call-in number

Ex. 6 Personal Privacy (PP)

From: Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Sent: Monday, April 29, 2019 9:21 AM
To: Gelber, Bruce (ENRD) <BGelber@ENRD.USDOJ.GOV>
Cc: Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV>; Douglas, Nathaniel (ENRD) <NDouglas@ENRD.USDOJ.GOV>; Snow, Corinne (ENRD) <CSnow@ENRD.USDOJ.GOV>; Mariani, Tom (ENRD) <TMariani@ENRD.USDOJ.GOV>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Subject: Re: SEP discussion on Monday

That works. Will you send out a calendar invite?

Sent from my iPhone

> On Apr 29, 2019, at 8:35 AM, Gelber, Bruce (ENRD) <Bruce.Gelber@usdoj.gov> wrote:
>
> Larry - yes, 5 works best for us if you can arrange it.
>
> Let's talk about Houston in the call.
>
> Sent from my iPhone
>
>> On Apr 28, 2019, at 5:17 PM, Starfield, Lawrence <Starfield.Lawrence@epa.gov> wrote:
>>
>> Bruce,
>>
>> We have a conflict at 5 pm, but might be able to move it. Let me know if I should try.
>>

Ex. 5 AC/AWP/DP

>> Larry
>>
>> This message is CONFIDENTIAL, and may contain legally privileged information. If you are not the intended recipient, or believe you received this communication in error, please delete it immediately, do not copy, and notify the sender. Thank you.
>>
>> -----Original Message-----
>> From: Gelber, Bruce (ENRD) <Bruce.Gelber@usdoj.gov>
>> Sent: Sunday, April 28, 2019 3:19 PM
>> To: karen.dworkin@usdoj.gov; Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>

>> Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Snow, Corinne (ENRD) <Corinne.Snow@usdoj.gov>;
Mariani, Tom (ENRD) <Tom.Mariani@usdoj.gov>
>> Subject: Re: SEP discussion on Monday
>>
>> Karen - how about if we move the call to 5 pm. Would that help?
>>
>> Larry - will that work for you?
>>

Ex. 5 AC/AWP/DP

>>
>> Adding Nat to this email
>>
>> Sent from my iPhone
>>
>>> On Apr 26, 2019, at 7:33 AM, Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV> wrote:
>>>
>>> Very sorry but I just realized that I will be **Ex. 6 Personal Privacy (PP)** on
Monday, at 2:30. Depending on how long that takes, I may or may not be free to join you. Karen.
>>>
>>> -----Original Message-----
>>> From: Gelber, Bruce (ENRD) <BGelber@ENRD.USDOJ.GOV>
>>> Sent: Thursday, April 25, 2019 4:42 PM
>>> To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>
>>> Cc: Snow, Corinne (ENRD) <CSnow@ENRD.USDOJ.GOV>; Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV>;
Mariani, Tom (ENRD) <TMariani@ENRD.USDOJ.GOV>
>>> Subject: Re: Do you have time to talk this afternoon
>>>
>>> That works for me.
>>>
>>> Karen, Corinne, Tom - does that work for you?
>>>
>>> Sent from my iPhone
>>>
>>>> On Apr 25, 2019, at 4:12 PM, Starfield, Lawrence <Starfield.Lawrence@epa.gov> wrote:
>>>>
>>>> Bruce,
>>>>
>>>> If the weekly DOJ/EPA calls moves to Tuesday, we would like to use the Monday 3:30 pm slot for a
pre-brief for the Pannuccio meeting.
>>>>
>>>> Larry
>>>>
>>>> This message is CONFIDENTIAL, and may contain legally privileged information. If you are not the
intended recipient, or believe you received this communication in error, please delete it immediately, do
not copy, and notify the sender. Thank you.
>>>>
>>>>
>>>>
>>>> -----Original Message-----
>>>> From: Gelber, Bruce (ENRD) <Bruce.Gelber@usdoj.gov>
>>>> Sent: Thursday, April 25, 2019 12:56 PM
>>>> To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>
>>>> Subject: Do you have time to talk this afternoon
>>>>
>>>> Anytime after 2
>>>>
>>>> Topics include Houston, SEPs and Superfund. What fun!
>>>>
>>>> Sent from my iPhone

Message

From: OKeefe, Susan [OKeefe.Susan@epa.gov]
Sent: 9/20/2019 8:19:09 PM
To: OECA-OCE-XPS [OECA-OCE-XPS@epa.gov]; Binder, Jonathan [Binder.Jonathan@epa.gov]; Greenwald, Kathryn [Greenwald.Kathryn@epa.gov]
Subject: FW: The Morning Headlines from InsideEPA.com -- September 20, 2019

In case you didn't already read this....

SOK

From: InsideEPA.com <insideepa-alerts@iwpnews.com>
Sent: Friday, September 20, 2019 6:52 AM
To: OKeefe, Susan <OKeefe.Susan@epa.gov>
Subject: The Morning Headlines from InsideEPA.com -- September 20, 2019



September 20, 2019

The Weekly Focus

DOJ Weighs 'Broader' SEP Limits As New Policy Forces Renegotiations

A top Justice Department (DOJ) official is considering additional "broader" limits on the use of popular supplemental environmental projects (SEPs) as a way to mitigate penalties in enforcement settlements after DOJ last month curbed their use in municipal settlements, forcing renegotiation of some pending deals and likely curbing future settlements that would implement EPA's upcoming lead and copper drinking water rule.

Latest News

Agencies Defend Legal Basis For Scrapping California Auto GHG Waiver

EPA and the Transportation Department (DOT) are defending the legal basis for their just-issued rule revoking California's power to set its own vehicle greenhouse gas limits, asserting the state is preempted by fuel economy

law and lacks “compelling and extraordinary” conditions needed to receive such authority under the Clean Air Act.

Science Rule Schedule Slips As EPA Readies Supplemental, Wheeler Says

EPA Administrator Andrew Wheeler told the House science committee Sept. 19 that the agency’s schedule for issuing its controversial rule barring regulators from relying on scientific research that is not published has slipped as the agency is preparing to issue a supplemental proposal in early 2020.

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A bipartisan group of 15 governors is pressing leaders of the House and Senate Armed Services committees to back measures in pending defense authorization legislation that would require EPA and the Defense Department (DOD) to set policies to regulate the chemicals, curb releases and clean up contamination from per- and polyfluoroalkyl substances (PFAS).

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Daily Feed

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The president’s remarks come as the White House is engaged in a heated confrontation with California over vehicle greenhouse gas standards.

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The government says that the vehicle manufacturer illegally “stockpiled” thousands of engines with outdated emission controls and later sold them in heavy construction equipment.

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States See Climate Programs Building 'Infrastructure' For Future Federal Plan

BOSTON -- State officials pushing aggressive green energy mandates and opposing EPA's rule rollbacks see their programs as "infrastructure" for complying with future federal rules, echoing a belief from some Democrats and environmentalists that states will be unable to meet their climate goals without Democrats retaking the White House.

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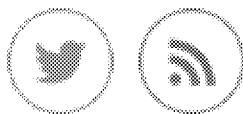
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Telephone: 703-416-8500 or 1-800-424-9068

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From: Brown, Stephanie [Brown.Stephanie@epa.gov]
Sent: 9/20/2019 11:50:22 AM
To: Presler, Amos [presler.amos@epa.gov]; McAuliffe, Mary [mcauliffe.mary@epa.gov]
CC: Baney, Tony [Baney.Tony@epa.gov]; Miles, James [miles.james@epa.gov]; Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: SEPs - Fwd: from InsideEPA.com -- September 20, 2019

Hi. FYI:

DOJ Weighs 'Broader' SEP Limits As New Policy Forces Renegotiations

September 19, 2019

A top Justice Department (DOJ) official is considering additional “broader” limits on the use of popular supplemental environmental projects (SEPs) as a way to mitigate penalties in enforcement settlements after DOJ last month curbed their use in municipal settlements, forcing renegotiation of some pending deals and likely curbing future settlements that would implement EPA’s upcoming lead and copper drinking water rule. Jeffrey Clark, DOJ’s assistant attorney general for the Environment & Natural Resources Division (ENRD), told *Inside EPA* on the sidelines of the American Bar Association environment fall conference in Boston Sept. 12, that the department continues to examine additional options for curbing defendants’ use of such projects in settlements, as he had indicated in his **August memo** that dramatically limited SEPs for municipalities.

“That memo indicates that we’re looking at the larger issue of SEPs as well, so that’s ongoing,” he said. “I shouldn’t and can’t prejudge the outcome of that. What’s under consideration is whether to do something that’s broader than that.”

Clark added that, in the meantime, “the only guidance is the state and local assessment, which does discuss some general principles. It’s not purely talking about state and local SEPs.”

While Clark would not discuss details of any forthcoming policy, one source says attorneys are bracing for the possibility that DOJ may “completely abolish” the use of SEPs, or at least make it much more difficult to negotiate them.

But even before any next step, a second source adds that Clark’s recent limits on SEPs in municipal settlements is already forcing the renegotiation of about 10 draft deals with publicly owned treatment works (POTWs).

“We are not talking about a reopener or modification to an already-entered decree,” the second source says. DOJ has sought to modify one settlement that had been submitted to a court but not yet entered, over the SEP issue. DOJ opposed the 2017 agreement with Harley Davidson over its \$3 million payment to the American Lung Association for a wood-stove swap-out program. More than two years later, the court has yet to act on the request, which DOJ **reiterated most recently in February**.

SEPs are projects that settling parties agree to undertake to mitigate the impacts of an alleged environmental violation and have long been considered a popular settlement enticement since parties can win penalty relief and build good will in the communities the projects benefit.

Defenders of the projects say they have often been crucial tools in facilitating otherwise difficult-to-negotiate agreements with both governments and private industry, and that the inability to use them would spur more litigation or higher enforcement penalties for defendants.

But critics charge that SEPs enable “sweetheart deals” with environmentalists and allow enforcement efforts to go beyond what would otherwise be obtainable under existing laws.

Top Trump administration officials have adopted policies that limited their use. For example, former Attorney General Jeff Sessions in 2017 imposed **a ban on payments** to third parties in settlements that environmentalists and many attorneys feared would limit the use of SEPs.

Sessions **later clarified** that projects that comply with EPA's SEP policy were exempted from the ban. He also indicated that SEPs in settlements with municipal entities required approval from ENRD, Clark's Aug. 21 memo reiterated Sessions' requirement that municipal entities receive ENRD approval but also issued additional criteria that the memo says will apply to "rare" case-by-case approval of SEPs, characterizing the criteria as "interim" while DOJ continues its broader review of the issue.

Outright Ban

But the outside sources say that if Clark proceeds with an outright ban on SEPs, it could hamper settling parties' willingness to reach a deal and prompt more litigation, though these sources also note that the impact is unclear since DOJ is also bringing far fewer enforcement cases compared to prior administrations.

The second source says the latest SEPs policy is "more of an announcement as opposed to a conversation" and that the decision, which stems from Attorney General William Barr, came as a surprise to DOJ staff attorneys. From the perspective of communities planning to do SEPs, "this is a bit of a game changer," the source adds. "It certainly will impact how civil penalty discussions play out, given the nexus between civil penalties and SEPs. As a result, certain [municipal governments] will be subject to greater civil penalties than if they were otherwise doing a SEP. . . . A lot of munis may be surprised to learn down the road that a tool that had been used widely, prior to the August memo, is no longer an option."

However, the source also notes, "There are not a whole lot of new enforcement efforts, given the downward trend, so the impacts" may not be widespread. A future administration could, of course, reverse the policy, but "what we have right now is the policy we have."

The first source says the new SEP limits will likely impair settlement discussions when DOJ begins enforcing new EPA lead and copper rules under the Safe Drinking Water Act, which will "require large remediation across the country" and is a new national enforcement priority.

But the source also notes far fewer enforcement cases being pursued and of those, settlements of cases even without SEPs are taking longer to win management approval, signaling that settling cases is "less of a priority" at DOJ. The source also says that the clampdown on SEPs so far has not impacted industry's willingness to consider them in ongoing settlement talks.

A DOJ spokesman declined to say what might be next for SEPs but referenced an **Aug. 27 talk** by Principal Deputy Assistant Attorney General Jonathan Brightbill to the Association of Air Pollution Control Agencies where he said the August memo "concludes . . . that consent decrees with state and local governments generally should not seek relief that a court cannot order."

He added that the memo clarifies that SEPs will not be approved as part of municipal agreements. "ENRD will generally not use its settlements and consent decrees as a means for defendants to acquiesce in doing projects that may benefit certain special interests."

But Brightbill also acknowledged that ENRD has expended "significant effort" in negotiating SEPs prior to the policy and in light of that included a process for seeking exemptions. He also extended an invitation for Congress to clearly authorize the use of SEPs.

However, the newest restrictions are getting widespread condemnation from groups such as the Center for Progressive Reform, which called the policy "a damaging retreat for environmental enforcement" in a **Sept. 18 blog post**. It also called the policy "ill-considered and irrational" because SEPs often represent a middle ground and a "logical extension of the typical activities" of local agencies.

The alternative of paying higher fines to the U.S. Treasury "accomplishes little or nothing for health or the environment."

The American College of Environmental Lawyers' Zach Miller called the policy "three steps back" in a **Sept. 10 blog post**. The moves are "legally unsound, are generally not sought or supported by the business community or state or local governments, and are counter-productive to the effective enforcement of federal environmental law." -- Dawn Reeves (dreeves@iwpnnews.com)

Stephanie Brown
OECA/OCE/WCED

Begin forwarded message:

From: "InsideEPA.com" <insideepa-alerts@iwpnews.com>

Date: September 20, 2019 at 7:14:04 AM EDT

To: brown.stephanie@epa.gov

Subject: The Morning Headlines from InsideEPA.com -- September 20, 2019

Reply-To: insideepa-alerts@iwpnews.com



September 20, 2019

The Weekly Focus

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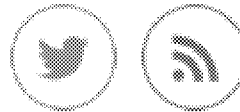
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Message

From: Ihlenburg, Erick [Ihlenburg.Erick@epa.gov]
Sent: 4/23/2019 7:12:47 PM
To: Makepeace, Caroline [Makepeace.Caroline@epa.gov]; Klepp, Robert [Klepp.Robert@epa.gov]
Subject: RE: **Ex. 7(A)**

Thank you both. I'm available at 4, I'm at my AWL but my office phone is paired.

Erick

Erick R. Ihlenburg
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007
Phone: (212) 637-3250
Fax: (212) 637-3199



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From: Makepeace, Caroline
Sent: Tuesday, April 23, 2019 2:44 PM
To: Klepp, Robert <Klepp.Robert@epa.gov>; Ihlenburg, Erick <Ihlenburg.Erick@epa.gov>
Subject: RE: **Ex. 7(A)**

I'm not available then. My two cents on next steps:

Ex. 5 AC/AWP/DP Ex. 7(A)

- 4) Your talk with Susan could be next week or the one after, depending on your timing with all the above

Caroline Makepeace

Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Klepp, Robert
Sent: Tuesday, April 23, 2019 2:26 PM
To: Ihlenburg, Erick <Ihlenburg.Erick@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: Ex. 7(A)

Erick,

We just met with John Fogarty. Are you free at 4 this afternoon for a call to discuss?

Bob

Robert G. Klepp, Attorney
Office of Civil Enforcement -- Air Enforcement Division
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
(202) 564-5805

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Message

From: Porter, Amy [Porter.Amy@epa.gov]
Sent: 4/25/2019 9:39:26 PM
To: Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: RE: Follow-up Items to OCE Weekly 4-25-19

Thank you for looping me in

From: Makepeace, Caroline
Sent: Thursday, April 25, 2019 4:40 PM
To: Porter, Amy <Porter.Amy@epa.gov>
Subject: FW: Follow-up Items to OCE Weekly 4-25-19

FYI

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Fogarty, Johnpc
Sent: Thursday, April 25, 2019 4:38 PM
To: Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Sullivan, Greg <Sullivan.Greg@epa.gov>; Saenz, Diana <Saenz.Diana@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Cc: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Branning, Hannah <Branning.Hannah@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Subject: RE: Follow-up Items to OCE Weekly 4-25-19

Ex. 5 AC/DP

From: Buterbaugh, Kristin
Sent: Thursday, April 25, 2019 4:18 PM
To: Sullivan, Greg <Sullivan.Greg@epa.gov>; Saenz, Diana <Saenz.Diana@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Cc: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Branning, Hannah <Branning.Hannah@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Subject: Follow-up Items to OCE Weekly 4-25-19

Good afternoon,

Here the follow-up items from today's OCE Weekly:

Ex. 5 AC/DP

Please let me know if there are any questions. Thank you.

Kristin Buterbaugh

Special Assistant

OECA - Office of Civil Enforcement

U.S. Environmental Protection Agency

WJC South 3119C

1200 Pennsylvania Avenue, NW

Washington, DC 20460

(202) 564-4479

Buterbaugh.Kristin@epa.gov

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From: Ihlenburg, Erick [Ihlenburg.Erick@epa.gov]
Sent: 4/25/2019 5:39:08 PM
To: Makepeace, Caroline [Makepeace.Caroline@epa.gov]; Klepp, Robert [Klepp.Robert@epa.gov]
Subject: RE: NYC DOE
Attachments: 04.23.19 **Ex. 7(A)** A Briefing Paper_4_3_19_draft_updated.docx

Bob, Caroline,

I've attached an updated briefing paper for **Ex. 5 AC/AWP/DP Ex. 7(A)**. If you don't mind, please send me any markups so I can circulate a final version to my management. Thanks,

Erick

Erick R. Ihlenburg
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007
Phone: (212) 637-3250
Fax: (212) 637-3199



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From: Makepeace, Caroline
Sent: Tuesday, April 23, 2019 2:44 PM
To: Klepp, Robert <Klepp.Robert@epa.gov>; Ihlenburg, Erick <Ihlenburg.Erick@epa.gov>
Subject: RE: **Ex. 7(A)**

I'm not available then. My two cents on next steps:

Ex. 5 AC/AWP/DP Ex. 7(A)

Ex. 5 AC/AWP/DP Ex. 7(A)

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Klepp, Robert
Sent: Tuesday, April 23, 2019 2:26 PM
To: Ihlenburg, Erick <Ihlenburg.Erick@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: **Ex. 7(A)**

Erick,

We just met with John Fogarty. Are you free at 4 this afternoon for a call to discuss?

Bob

Robert G. Klepp, Attorney
Office of Civil Enforcement -- Air Enforcement Division
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
(202) 564-5805

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From: Porter, Amy [Porter.Amy@epa.gov]
Sent: 4/11/2019 1:55:51 PM
To: OECA-OCE-XPS [OECA-OCE-XPS@epa.gov]; Binder, Jonathan [Binder.Jonathan@epa.gov]
Subject: final XPS General agenda

AGENDA
XPS General 4/11/19
Call in number 1 (202) 991-0477 Conference ID 2188530

1. Criminal Victims Conference
2. AZ Audit Privilege Law
3. UAS/Drone Policy
4. LEAN Next Steps
5. DOJ SEP Briefing
6. Documents for DOD
7. PACE Proposal
8. Management and Personnel

Amy Porter, Director
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-2431

Appointment

From: Swanson, Amy [Swanson.Amy@epa.gov]
Sent: 4/11/2019 11:42:22 AM
To: Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: Canceled: SEP Prep
Location: I'll phone your office
Start: 4/11/2019 6:00:00 PM
End: 4/11/2019 6:30:00 PM
Show Time As: Free
Importance: High

Hi Caroline. Amy Porter informed me yesterday that you are wrangling with DOJ regarding the future role and scope of SEPs in settlements. Since things are a bit up in the air, I am cancelling your SEP presentation on April 18th and our planning call today. Just give me a shout when the issues with DOJ have been resolved and you are ready to proceed with your SEP presentation. Thank you, and good luck, Amy Swanson.

Message

From: Porter, Amy [Porter.Amy@epa.gov]
Sent: 4/9/2019 5:34:12 PM
To: Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: RE: Houston

ugh

From: Makepeace, Caroline
Sent: Tuesday, April 09, 2019 12:04 PM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Cc: Theis, Joseph <Theis.Joseph@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>
Subject: Re: Houston

Thanks so much. There's so much up in the air (and potential "telephone tag" misunderstanding) — thought it couldn't hurt to confirm!

Sent from my iPhone

On Apr 9, 2019, at 11:20 AM, Kelley, Rosemarie <Kelley.Rosemarie@epa.gov> wrote:

That's right.

Rosemarie

From: Theis, Joseph
Sent: Tuesday, April 09, 2019 10:27 AM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Subject: RE: Houston

Ex. 5 AC/DP

Joseph G. Theis
Associate Director
Water Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. EPA (2243A)
1200 Pennsylvania Ave, NW
Washington, D.C. 20460
(202)564-4053

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From: Makepeace, Caroline
Sent: Tuesday, April 09, 2019 9:25 AM
To: Theis, Joseph <Theis.Joseph@epa.gov>

Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>

Subject: Re: Houston

Thanks!

Ex. 5 AC/DP

Sent from my iPhone

On Apr 9, 2019, at 9:14 AM, Theis, Joseph <Theis.Joseph@epa.gov> wrote:

Caroline, Here is Susan's email on Houston that Rosemarie mentioned.

Joseph G. Theis
Associate Director
Water Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. EPA (2243A)
1200 Pennsylvania Ave, NW
Washington, D.C. 20460
(202)564-4053

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From: Bodine, Susan

Sent: Friday, April 05, 2019 4:23 PM

To: Theis, Joseph <Theis.Joseph@epa.gov>

Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>

Subject: RE: interpretive statement and follow-up Houston question

Ex. 5 AC/DP

Ex. 5 AC/DP

Ex. 5 Attorney Client (AC)

From: Theis, Joseph

Sent: Friday, April 5, 2019 2:51 PM

To: Bodine, Susan <bodine.susan@epa.gov>

Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Sullivan, Greg <Sullivan.Greg@epa.gov>; Bahk, Benjamin <Bahk.Benjamin@epa.gov>; Fisher, Mike <Fisher.Mike@epa.gov>

Subject: RE: interpretive statement and follow-up Houston question

Ex. 5 Attorney Client (AC)

Thanks,

- Joe

Joseph G. Theis
Associate Director
Water Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. EPA (2243A)
1200 Pennsylvania Ave, NW
Washington, D.C. 20460
(202)564-4053

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Message

From: Porter, Amy [Porter.Amy@epa.gov]
Sent: 4/8/2019 2:03:33 PM
To: Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: RE: SEP briefing DOJ

Rosemarie, you, me, John (who is out)

From: Makepeace, Caroline
Sent: Monday, April 08, 2019 10:00 AM
To: Porter, Amy <Porter.Amy@epa.gov>
Subject: RE: SEP briefing DOJ

I am actually. Who is invited? Guess we should discuss.

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Porter, Amy
Sent: Monday, April 08, 2019 9:36 AM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: SEP briefing DOJ

We are invited to attend. I don't have meeting info yet. Are you compressed?

Amy Porter, Director
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-2431

Message

From: Crossland, Andy [Crossland.Andy@epa.gov]
Sent: 9/18/2019 8:13:22 PM
To: Makepeace, Caroline [Makepeace.Caroline@epa.gov]
CC: Mostaghim, Negin [Mostaghim.Negin@epa.gov]
Subject: RE: Request for Review - Email

Very helpful edits – thank you.....
-Andy

Andy Crossland
Chief, Waste Enforcement Branch
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
Environmental Protection Agency
(202) 564-0574
Crossland.andy@epa.gov

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From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Wednesday, September 18, 2019 4:02 PM
To: Mostaghim, Negin <Mostaghim.Negin@epa.gov>
Cc: Crossland, Andy <Crossland.Andy@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>
Subject: RE: Request for Review - Email

Hi guys,

Ex. 5 AC/DP

Thanks!

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency

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From: Mostaghim, Negin <Mostaghim.Negin@epa.gov>
Sent: Wednesday, September 18, 2019 9:46 AM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Cc: Crossland, Andy <Crossland.Andy@epa.gov>
Subject: Request for Review - Email

Dear Caroline,

Ex. 5 AC/DP

Thank you.
Sincerely,
Negin

REMs-

Ex. 5 AC/DP

Negin M. Mostaghim
Attorney-Advisor, Office of Civil Enforcement
U.S. Environmental Protection Agency
Washington, D.C.
Phone: (202) 564-4694

Message

From: Mostaghim, Negin [Mostaghim.Negin@epa.gov]
Sent: 9/18/2019 8:03:51 PM
To: Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: RE: Request for Review - Email

Thank you Caroline.
Negin

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Wednesday, September 18, 2019 4:02 PM
To: Mostaghim, Negin <Mostaghim.Negin@epa.gov>
Cc: Crossland, Andy <Crossland.Andy@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>
Subject: RE: Request for Review - Email

Hi guys,

Ex. 5 AC/DP

Thanks!

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Mostaghim, Negin <Mostaghim.Negin@epa.gov>
Sent: Wednesday, September 18, 2019 9:46 AM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Cc: Crossland, Andy <Crossland.Andy@epa.gov>
Subject: Request for Review - Email

Dear Caroline,

Ex. 5 AC/DP

Thank you.
Sincerely,
Negin

REMs-

Ex. 5 AC/DP

Negin M. Mostaghim
Attorney-Advisor, Office of Civil Enforcement
U.S. Environmental Protection Agency
Washington, D.C.
Phone: (202) 564-4694

Message

From: Porter, Amy [Porter.Amy@epa.gov]
Sent: 9/17/2019 3:07:54 PM
To: Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: Ex. 5 Attorney Client (AC)
Attachments: Ex. 5 Attorney Client (AC) 09 16 19
Draft.docx

Thanks, Caroline. I assume DOJ, OCE Divisions, and regions have reviewed?

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Monday, September 16, 2019 3:19 PM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>
Cc: Pollins, Mark <Pollins.Mark@epa.gov>; Theis, Joseph <Theis.Joseph@epa.gov>; Brooks, Phillip <Brooks.Phillip@epa.gov>; Chapman, Apple <Chapman.Apple@epa.gov>
Subject: Ex. 5 Attorney Client (AC)

Ex. 5 AC/AWP/DP

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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Message

From: Dworkin, Karen (ENRD) [Karen.Dworkin@usdoj.gov]
Sent: 9/16/2019 1:04:13 PM
To: Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: FW: URGENT - for your review - Brookhaven and Hattiesburg -- better versions

Here's where we are.

From: Gallagher, Mark (ENRD) <MGallagher@ENRD.USDOJ.GOV>
Sent: Monday, September 16, 2019 9:02 AM
To: Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV>
Subject: Fwd: URGENT - for your review - Brookhaven and Hattiesburg -- better versions

Hi Karen

I'm still waiting for a better answer but this is what I have so far.

I've asked Matt Silverman and Diane Leonardo to get me the definitive answer as soon as they can.

-Mark

Begin forwarded message:

From: "Silverman, Matthew (USANYE)" <MSilverman@usa.doj.gov>
Date: September 13, 2019 at 3:23:16 PM EDT
To: "Gallagher, Mark (ENRD)" <MGallagher@ENRD.USDOJ.GOV>
Cc: "Beckmann, Diane (USANYE)" <DBeckmann@usa.doj.gov>
Subject: RE: URGENT - for your review - Brookhaven and Hattiesburg -- better versions

Ex. 5 AC/AWP/DP

From: Gallagher, Mark (ENRD) <MGallagher@ENRD.USDOJ.GOV>
Sent: Friday, September 13, 2019 10:22 AM
To: Silverman, Matthew (USANYE) <MSilverman@usa.doj.gov>
Cc: Beckmann, Diane (USANYE) <DBeckmann@usa.doj.gov>
Subject: Re: URGENT - for your review - Brookhaven and Hattiesburg -- better versions

Ok that's what I thought

By the way if true that suggests we don't need "pre approval" of this CJ

M

On Sep 13, 2019, at 10:01 AM, Silverman, Matthew (USANYE) <MSilverman@usa.doj.gov> wrote:

Ex. 5 AC/AWP/DP

From: Gallagher, Mark (ENRD) <MGallagher@ENRD.USDOJ.GOV>
Sent: Friday, September 13, 2019 9:52 AM
To: Beckmann, Diane (USANYE) <DBeckmann@usa.doj.gov>; Silverman, Matthew (USANYE) <MSilverman@usa.doj.gov>
Subject: Fwd: URGENT - for your review - Brookhaven and Hattiesburg -- better versions

Hi guys

Do you know the answer?

-Mark

Begin forwarded message:

From: "Dworkin, Karen (ENRD)" <KDworkin@ENRD.USDOJ.GOV>
Date: September 13, 2019 at 8:49:32 AM EDT
To: "Gallagher, Mark (ENRD)" <MGallagher@ENRD.USDOJ.GOV>
Subject: FW: URGENT - for your review - Brookhaven and Hattiesburg -- better versions

Mark, do you know the answer to Caroline's question re Brookhaven.

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Thursday, September 12, 2019 2:34 PM
To: Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV>
Subject: RE: URGENT - for your review - Brookhaven and Hattiesburg -- better versions

Ex. 5 AC/AWP/DP

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Dworkin, Karen (ENRD) <Karen.Dworkin@usdoj.gov>
Sent: Thursday, September 12, 2019 2:24 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: URGENT - for your review - Brookhaven and Hattiesburg -- better versions

Having folks that know these cases review these now. Will get back to you very soon.

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Thursday, September 12, 2019 12:55 PM
To: Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV>
Subject: FW: URGENT - for your review - Brookhaven and Hattiesburg -- better versions

Ugh, version control issues, because my computer kept crashing – please look at these instead. Sorry!

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement

US Environmental Protection Agency
202-564-6012

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From: Makepeace, Caroline
Sent: Thursday, September 12, 2019 12:42 PM
To: karen.dworkin@usdoj.gov
Subject: FW: URGENT - for your review - Brookhaven and Hattiesburg

Karen —

Ex. 5 AC/AWP/DP

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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Message

From: Porter, Amy [Porter.Amy@epa.gov]
Sent: 9/16/2019 12:25:46 PM
To: Holmes, Carol [Holmes.Carol@epa.gov]
CC: Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: Re: Cancel or reschedule Thursday's DOJ/OCE/RC call

I will ask her. I'm guessing cancel.

Sent from my iPhone

On Sep 16, 2019, at 8:14 AM, Holmes, Carol <Holmes.Carol@epa.gov> wrote:

Ex. 5 Attorney Client (AC)

DOJ says they don't have any agenda items.

I didn't get any response to my request for agenda items (deadline was COB on Friday), and folks met with the RCs last week.

Amy – can you ask Rosemarie if she wants to have the call this Thursday, or cancel (or reschedule) it?

Thanks!

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Carol S. Holmes
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement (MC 2241A)
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460
Phone (202) 564-8709

From: Dworkin, Karen (ENRD) <Karen.Dworkin@usdoj.gov>
Sent: Monday, September 16, 2019 8:06 AM
To: Holmes, Carol <Holmes.Carol@epa.gov>; Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>
Cc: Bahk, Benjamin <Bahk.Benjamin@epa.gov>
Subject: RE: Requesting feedback on two proposed agenda items for Thursday's DOJ/OCE/RC call

Hi Carol. Ex. 5 Attorney Client (AC)

I'm copying Nat as he will be joining the call. Please copy him on the final agenda.

Tom is out and I have another obligation that conflicts with this call, so neither of us will be on the call. I don't believe we have agenda items.

Karen.

From: Holmes, Carol <Holmes.Carol@epa.gov>
Sent: Monday, September 16, 2019 8:01 AM
To: Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV>
Cc: Bahk, Benjamin <Bahk.Benjamin@epa.gov>
Subject: RE: Requesting feedback on two proposed agenda items for Thursday's DOJ/OCE/RC call

Hi Karen **Ex. 5 Attorney Client (AC)** or if there is anything DOJ can speak to on this topic if we have it on the agenda for the call this week. Thanks, Carol

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Carol S. Holmes
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement (MC 2241A)
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460
Phone (202) 564-8709

From: Dworkin, Karen (ENRD) <Karen.Dworkin@usdoj.gov>
Sent: Tuesday, August 13, 2019 3:12 PM
To: Holmes, Carol <Holmes.Carol@epa.gov>
Cc: Bahk, Benjamin <Bahk.Benjamin@epa.gov>
Subject: RE: Requesting feedback on two proposed agenda items for Thursday's DOJ/OCE/RC call

Carol, # 1 is premature. We are ok canceling this one. Karen.

From: Holmes, Carol <Holmes.Carol@epa.gov>
Sent: Tuesday, August 13, 2019 9:33 AM
To: Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV>
Cc: Bahk, Benjamin <Bahk.Benjamin@epa.gov>
Subject: Requesting feedback on two proposed agenda items for Thursday's DOJ/OCE/RC call

Hi Karen – I wanted to check in with you regarding two proposed agenda items for the call, to see if they made sense from a DOJ perspective:

1.

Ex. 5 AC/DP

2. On the November call we talked about making sure that the case name appeared on signature pages for CDs, either as a headers/footer or otherwise on the signature pages. But we are still seeing CDs without the case name on signature pages. We were thinking a reminder would be good, but didn't want to surprise you with the agenda item.

These are the only two agenda items for now. Could you please get back to me with DOJ's reaction to these two items, especially because if item 1 should be postponed, then I may suggest we cancel (would that be OK with DOJ?). Thanks!

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Carol S. Holmes
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement (MC 2241A)
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460
Phone (202) 564-8709

Message

From: Ihlenburg, Erick [Ihlenburg.Erick@epa.gov]
Sent: 12/11/2018 8:00:10 PM
To: Makepeace, Caroline [Makepeace.Caroline@epa.gov]
CC: Klepp, Robert [Klepp.Robert@epa.gov]
Subject: RE: **Ex. 7(A)**

Thanks, Caroline. We will certainly let you and Bob know how things go with the RA.

Erick

Erick R. Ihlenburg
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007
Phone: (212) 637-3250
Fax: (212) 637-3199



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From: Makepeace, Caroline
Sent: Tuesday, December 11, 2018 2:51 PM
To: Ihlenburg, Erick <Ihlenburg.Erick@epa.gov>
Cc: Klepp, Robert <Klepp.Robert@epa.gov>
Subject: RE: **Ex. 7(A)**

Hi Erick,

Ex. 5 AC/AWP/DP, 7(A)

Ex. 5 AC/AWP/DP, 7(A)

Let me know how things go on Monday – and good luck!!

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Ihlenburg, Erick
Sent: Tuesday, December 11, 2018 1:29 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Cc: Klepp, Robert <Klepp.Robert@epa.gov>
Subject: RE: Ex. 7(A)

Hi Caroline,

Ex. 5 AC/AWP/DP Ex. 7(A)

FYI,

we're briefing our KA on Monday morning and will cover these issues. We'll let you know what feedback we get. Thanks,

Erick

Erick R. Ihlenburg
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007
Phone: (212) 637-3250
Fax: (212) 637-3199



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From: Makepeace, Caroline
Sent: Friday, November 02, 2018 2:23 PM
To: Klepp, Robert <Klepp.Robert@epa.gov>; Ihlenburg, Erick <Ihlenburg.Erick@epa.gov>; Fried, Gregory <Fried.Gregory@epa.gov>; Villatora, Liliana <Villatora.Liliana@epa.gov>
Subject: RE: NYC DOE Boilers Info

Ex. 5 AC/AWP/DP Ex. 7(A)

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Klepp, Robert
Sent: Tuesday, October 30, 2018 4:27 PM
To: Ihlenburg, Erick <Ihlenburg.Erick@epa.gov>; Fried, Gregory <Fried.Gregory@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Cc: Villatora, Liliana <Villatora.Liliana@epa.gov>
Subject: RE: **Ex. 7(A)**

Thanks Erick,

Ex. 5 AC/AWP/DP Ex. 7(A)

You

available to talk tomorrow?

Thanks,
Bob

Robert G. Klepp, Attorney
Office of Civil Enforcement -- Air Enforcement Division
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
(202) 564-5805

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From: Ihlenburg, Erick
Sent: Tuesday, October 30, 2018 3:34 PM
To: Klepp, Robert <Klepp.Robert@epa.gov>; Fried, Gregory <Fried.Gregory@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>

Cc: Villatora, Liliana <Villatora.Liliana@epa.gov>

Subject: **Ex. 7(A)**

All,

Ex. 5 AC/AWP/DP Ex. 7(A)

Erick

Erick R. Ihlenburg
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007
Phone: (212) 637-3250
Fax: (212) 637-3199



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Message

From: Ihlenburg, Erick [Ihlenburg.Erick@epa.gov]
Sent: 11/2/2018 7:57:42 PM
To: Makepeace, Caroline [Makepeace.Caroline@epa.gov]
CC: Villatora, Liliana [Villatora.Liliana@epa.gov]; Klepp, Robert [Klepp.Robert@epa.gov]; Fried, Gregory [Fried.Gregory@epa.gov]
Subject:
Attachments: **Ex. 7(A)**

Hi Caroline,

Ex. 7(A)

Erick

Erick R. Ihlenburg
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007
Phone: (212) 637-3250
Fax: (212) 637-3199



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From: Ann Czerwonka <ACzerwonka@indecon.com>
Sent: Monday, June 04, 2018 12:10 PM
To: Ihlenburg, Erick <Ihlenburg.Erick@epa.gov>; Klepp, Robert <Klepp.Robert@epa.gov>
Subject: RE: **Ex. 7(A)**

Erick and Rob,

Ex. 5 AC/AWP/DP Ex. 7(A)

Ex. 5 AC/AWP/DP Ex. 7(A)

Happy to discuss the details. I hope this is helpful!

Regards,
Ann

Ex. 5 AC/AWP/DP

Ann Czerwonka
Special Consultant
IEc
Industrial Economics, Incorporated
2067 Massachusetts Ave. Cambridge, MA 02140
617.354.0074 x182
860.633.5136 mobile
www.indecon.com

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From: Ihlenburg, Erick [<mailto:Ihlenburg.Erick@epa.gov>]
Sent: Friday, June 01, 2018 12:21 PM
To: Ann Czerwonka; Klenn, Robert
Subject: RE: **Ex. 7(A)**

Thank you very much, Ann. Your summary of the issue is spot on. We look forward to your analysis. Have a great weekend,

Erick

Erick R. Ihlenburg
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007
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Fax: (212) 637-3199



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From: Ann Czerwonka [<mailto:ACzerwonka@indecon.com>]

Sent: Friday, June 01, 2018 12:17 PM

To: Ihlenburg, Erick <Ihlenburg.Erick@epa.gov>; Klepp, Robert <Klepp.Robert@epa.gov>

Subject: **Ex. 7(A)**

Erick and Bob,

Ex. 5 AC/AWP/DP Ex. 7(A)

Please let me know if I've missed anything here, or if you have any other comments.

I'll be in touch!

Regards,
Ann

Ann Czerwonka
Special Consultant
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Industrial Economics, Incorporated
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617.354.0074 x182
860.633.5136 mobile
www.indecon.com

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Message

From: Porter, Amy [Porter.Amy@epa.gov]
Sent: 4/4/2019 1:11:25 PM
To: OECA-OCE-XPS [OECA-OCE-XPS@epa.gov]; Milton, Philip [Milton.Philip@epa.gov]; Binder, Jonathan [Binder.Jonathan@epa.gov]; Greenwald, Kathryn [Greenwald.Kathryn@epa.gov]
Subject: Re: revised XPS General Agenda

Taking off PACE and reducing the meeting to 30 min, from 10:30-11

Sent from my iPhone

On Apr 3, 2019, at 6:23 PM, Porter, Amy <Porter.Amy@epa.gov> wrote:

Revised draft agenda:

- 1) PACE (if Lauren is in agreement that we are ready)
- 2) Tribal
 - a. White House Inquiry
 - b. NTOC Meeting
 - c. OITA Program Evaluation

I don't think we need to put the O&G operator issue on.

Comments?

From: Porter, Amy
Sent: Wednesday, April 03, 2019 10:00 AM
To: OECA-OCE-XPS <OECA-OCE-XPS@epa.gov>; Milton, Philip <Milton.Philip@epa.gov>; Binder, Jonathan <Binder.Jonathan@epa.gov>; Greenwald, Kathryn <Greenwald.Kathryn@epa.gov>
Subject: XPS General Agenda - comments by 5pm

This is very draft – comments by 5pm please:

- 1) PACE proposal (Lauren)
- 2) DOJ SEP Concerns in Muni Cases (Caroline)
- 3) New O&G Program Applicability to Operators (Audit team, Susan, Caroline)
- 4) Tribal – do we need to catch her up on NTOC? Also, I'm hoping to have heard back from Region 8 on exactly what LEAN sessions RK needs to attend. Anything else?? (susan, JB)
- 5) Informal Actions Tracking - NOT likely to need this but penciling it in and we can decide after today's meeting.

Amy Porter, Director
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-2431

To: OECA-OCE-XPS[OECA-OCE-XPS@epa.gov]; Milton, Philip[Milton.Philip@epa.gov]; Binder, Jonathan[Binder.Jonathan@epa.gov]; Greenwald, Kathryn[Greenwald.Kathryn@epa.gov]
From: Porter, Amy[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8A3C7DFBB2E445A7A6D37AABBE73D06B-APORTE02]
Sent: Wed 4/3/2019 1:59:41 PM (UTC)
Subject: XPS General Agenda - comments by 5pm

This is very draft – comments by 5pm please:

- 1) PACE proposal (Lauren)
- 2) DOJ SEP Concerns in Muni Cases (Caroline)
- 3) New O&G Program Applicability to Operators (Audit team, Susan, Caroline)
- 4) Tribal – do we need to catch her up on NTOC? Also, I’m hoping to have heard back from Region 8 on exactly what LEAN sessions RK needs to attend. Anything else?? (susan, JB)
- 5) Informal Actions Tracking - NOT likely to need this but penciling it in and we can decide after today’s meeting.

Amy Porter, Director
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-2431

Message

From: Gonzalez, Sarah [Gonzalez.Sarah@epa.gov]
Sent: 11/15/2017 8:25:19 PM
To: Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: RE: Middletown - Updated SEP Summary

okay, thank you this is super helpful.

Sarah Gonzalez

Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Makepeace, Caroline
Sent: Wednesday, November 15, 2017 3:21 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Ex. 5 AC/AWP/DP

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Gonzalez, Sarah
Sent: Wednesday, November 15, 2017 3:14 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Ex. 5 AC/AWP/DP

Sarah Gonzalez

Attorney-Adviser
United States Environmental Protection Agency
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Washington, DC 20004

(202) 564-2841 (FAX 202-564-0018)

gonzalez.sarah@epa.gov

From: Makepeace, Caroline

Sent: Wednesday, November 15, 2017 2:59 PM

To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>

Subject: RE: Middletown - Updated SEP Summary

Ex. 5 AC/AWP/DP

Caroline Makepeace

Senior Counsel

Crosscutting Policy Staff

Office of Civil Enforcement

US Environmental Protection Agency

202-564-6012

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From: Gonzalez, Sarah

Sent: Wednesday, November 15, 2017 2:48 PM

To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>

Subject: RE: Middletown - Updated SEP Summary

Caroline,

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Sarah Gonzalez

Attorney-Adviser

United States Environmental Protection Agency

OECA - OCE - Water Enforcement Division

WJC South 3110B (Mail Code 2243-A)

1200 Pennsylvania Avenue NW

Washington, DC 20004

(202) 564-2841 (FAX 202-564-0018)

gonzalez.sarah@epa.gov

From: Makepeace, Caroline

Sent: Tuesday, November 14, 2017 5:36 PM

To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>

Subject: RE: Middletown - Updated SEP Summary

Sarah -

Ex. 5 AC/AWP/DP

Caroline Makepeace

Senior Counsel

Crosscutting Policy Staff

Office of Civil Enforcement

US Environmental Protection Agency

202-564-6012

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From: Gonzalez, Sarah

Sent: Tuesday, November 14, 2017 4:56 PM

To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>

Subject: RE: Middletown - Updated SEP Summary

Caroline,

Here is the information you requested.

Sarah Gonzalez

Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Gonzalez, Sarah
Sent: Tuesday, November 14, 2017 4:37 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

will do!

Sarah Gonzalez

Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Makepeace, Caroline
Sent: Tuesday, November 14, 2017 12:02 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Sarah –

Ex. 5 AC/AWP/DP

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Makepeace, Caroline
Sent: Wednesday, November 08, 2017 4:46 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Remind me if you haven't heard from me. There's a lot hopping, and I'm acting for Amy all week too. Thx, and have a good weekend.

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Gonzalez, Sarah
Sent: Wednesday, November 08, 2017 4:12 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

Next week is perfect, thank you!

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Makepeace, Caroline
Sent: Wednesday, November 08, 2017 4:10 PM
To: Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>
Subject: RE: Middletown - Updated SEP Summary

I will. But not until next week. Is that ok?

Caroline Makepeace

Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Gonzalez, Sarah
Sent: Wednesday, November 08, 2017 4:08 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: FW: Middletown - Updated SEP Summary

Good afternoon Caroline,

Ex. 5 AC/AWP

Thank you in advance,

Sarah Gonzalez
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
gonzalez.sarah@epa.gov

From: Atriano, Vincent [<mailto:vincent.atriano@squirepb.com>]
Sent: Wednesday, November 08, 2017 3:07 PM
To: McDaniel, Nicholas A. (ENRD) <Nicholas.A.McDaniel@usdoj.gov>
Cc: Robert.Darnell@USDOJ.GOV; Prichard, Gary <prichard.gary@epa.gov>; Gonzalez, Sarah <Gonzalez.Sarah@epa.gov>;
Helkowski Scott (lawrence.helkowski@ohioattorneygeneral.gov) <lawrence.helkowski@ohioattorneygeneral.gov>;
Landen, Les (lesl@cityofmiddletown.org) <lesl@cityofmiddletown.org>; 'Tadych, Scott' (scottt@cityofmiddletown.org)
<scottt@cityofmiddletown.org>; Etter, Andrew <andrew.etter@squirepb.com>
Subject: RE: Middletown - Updated Drafts

INADMISSIBLE SETTLEMENT COMMUNICATION

Nick:

Attached please find a letter responding to your request for additional information concerning the City's proposed SEP. Please let me know if you have any questions. Thanks.

Vince



Vincent Atriano
Partner
Squire Patton Boggs (US) LLP
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O +1 614 365 2700
F +1 614 365 2499
M +1 614 579 4708
vincent.atriano@squirepb.com | squirepattonboggs.com

From: McDaniel, Nicholas A. (ENRD) [<mailto:Nicholas.A.McDaniel@usdoj.gov>]
Sent: Wednesday, October 18, 2017 10:59 AM
To: Atriano, Vincent <vincent.atriano@squirepb.com>; Landen, Les (lesl@cityofmiddletown.org)
<lesl@cityofmiddletown.org>; Etter, Andrew <andrew.etter@squirepb.com>
Cc: Darnell, Robert (ENRD) <Robert.Darnell@usdoj.gov>; Prichard, Gary <prichard.gary@epa.gov>; 'Gonzalez, Sarah'
<Gonzalez.Sarah@epa.gov>; Helkowski Scott (lawrence.helkowski@ohioattorneygeneral.gov)
<lawrence.helkowski@ohioattorneygeneral.gov>
Subject: Middletown - Updated Drafts

Vince, Andrew, and Les,

Please see the attached redlines, and the responses below. I believe the state is still reviewing the drafts.

CD and PCMP Appendix

We accepted almost all of your proposed changes. A couple notes/explanations:

- CD Paragraph 20 – If we’re going to include the sentence allowing for a force majeure, we need to use the “best efforts” language rather than “diligent efforts.” “Best efforts” has been used in other CDs, and it mirrors the language in the Force Majeure section itself.
- CD Paragraph 21 – Interest needs to accrue from the Effective Date, so we can’t accept this deletion. The City can pay immediately upon entry and avoid any interest (which would be minimal anyway).
- PCMP wet weather sampling – We rejected this change; Middletown should take samples during wet weather both when CSOs are occurring and when they’re not. At that point, the CSOs will not be discharging during most wet weather events.

SEP Questions

Thank you for the information about the proposed SEP. For our own internal process, we could use some additional details: What is in the sediments being capped? Why are those pollutants bad for public health and the environment? Will the capping prevent those sediments from being discharged into the river via the hydraulic canal? The more specifics you’re able to provide, the better.

Total Civil Penalty

We appreciate the City’s explanation that it would be agreeing to perform a SEP with a significant price tag of Ex. 7(A). However, the City’s offer of a Ex. 7(A) cash penalty is not acceptable. Under the SEP Policy, a SEP may only offset up to 40% of the total penalty amount. So in this case, pursuant to the City’s offer, EPA would consider the total penalty to be Ex. 7(A) in cash and Ex. 7(A) in SEP “credit”). This number is less than the Ex. 7(A) offered previously by the City. Again, we recognize that the City would be agreeing to spend additional money on a SEP, which is why we are

willing to accept a penalty that is much lower than our original offers, but the cash portion of the City's penalty must be significantly higher.

Thanks,
Nick

Nicholas A. McDaniel
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611, Washington DC 20044
(202) 514-0096
Nicholas.A.McDaniel@usdoj.gov

46 Offices in 20 Countries

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#US

Message

From: Binder, Jonathan [Binder.Jonathan@epa.gov]
Sent: 11/6/2017 1:00:52 PM
To: OKeefe, Susan [OKeefe.Susan@epa.gov]; Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: FW: The Morning Headlines from InsideEPA.com -- November 6, 2017

Two SEP-related articles

Attorney General Jeff Sessions' order barring the Justice Department (DOJ) from entering into settlements that provide payments to non-governmental third parties is already derailing popular EPA supplemental environmental projects (SEPs), sources say, despite DOJ assurances that the projects can continue as long as they comply with EPA policy.

The move is heightening industry concerns that Sessions' order will curtail SEPs and make it more difficult to settle enforcement actions that they are intended to help resolve.

One industry source says that the Clean Air Act settlement DOJ and EPA announced Oct. 31 with ExxonMobil to resolve alleged violations at eight Texas and Louisiana facilities was slated to include several SEPs but most were dropped when the final deal was unveiled to comply with Sessions' policy -- even though those SEPs complied with EPA's SEP policy, which already bans such payments to third parties.

Instead, the final deal included only one SEP that required Exxon to pay for municipal officials to plant about 1,500 trees near the company's Baytown, TX, facilities, and two state air pollution monitoring projects that must comply with EPA's SEP guidance.

From: InsideEPA.com [mailto:insideepa-alerts@iwpnews.com]
Sent: Monday, November 6, 2017 7:23 AM
To: Binder, Jonathan <Binder.Jonathan@epa.gov>
Subject: The Morning Headlines from InsideEPA.com -- November 6, 2017



The critical environmental policy-making news you need as you begin your day

November 6, 2017

Latest News

Sessions' Ban On Third-Party Payments Derails EPA 'Supplemental Projects'

Attorney General Jeff Sessions' order barring the Justice Department (DOJ) from entering into settlements that provide payments to non-governmental third parties is already derailing popular EPA supplemental environmental projects (SEPs), sources say, despite DOJ assurances that the projects can continue as long as they comply with EPA policy.

Environmentalists Blast Trump Administration's Exxon SEP As Inadequate

Environmentalists are blasting as inadequate a supplemental environmental project (SEP) that involves tree planting that the Trump administration included in a proposed Clean Air Act settlement with Exxon Mobil after the Justice Department (DOJ) reportedly dropped a series of other SEPs from the deal.

Critics Float Legal Theories To Challenge Pruitt's Science Advisor Policy

House Democrats and a Columbia University law professor are detailing possible legal arguments that could be used to challenge Administrator Scott Pruitt's controversial new directive barring scientists who are receiving an EPA research grant from serving on one of its scientific advisory committees.

9th Circuit Reverses Broad Read Of RCRA Anti-Duplication Provision

The U.S. Court of Appeals for the 9th Circuit has reversed a district court decision that broadly interpreted the Resource Conservation & Recovery Act's (RCRA) anti-duplication provision, finding that the lower court had overreached when it ruled that the Clean Water Act (CWA) categorically preempts RCRA claims.

Trump Administration Clears Climate Report But Key Reviewer Raises Doubts

The Trump administration has released a final climate science report finding it "extremely likely" that human activities are the "dominant cause" of climate change, a position at odds with the administration's general stance, but a former Energy Department (DOE) adviser who is expected to run EPA's controversial climate science review is already criticizing the draft.

NMA Seeks EPA Rule Overhauls But Favors Punting On GHG Risk Finding

The National Mining Association (NMA) is backing the Trump EPA's push to rescind or overhaul Obama-era rules including the Clean Power Plan (CPP) and Clean Water Act (CWA) jurisdiction rule, cautioning against letting highly politicized debates over more controversial issues such as the agency's climate risk finding hinder the regulatory reforms.

EPA Floats Extended Methane NSPS 'Phase-In' As Alternative To Rule Stay

EPA is floating new legal "theories" and regulatory options to delay implementation of key mandates in the Obama-era rule setting first-time limits on the greenhouse gas methane from new oil and gas drilling -- a possible legal foundation for an alternative approach to its prior plan to outright stay major parts of the rule for two years.

Daily Feed

Smith, House science committee chairman, announces retirement

Smith announced he will not seek re-election days after EPA Administrator Scott Pruitt adopted Smith's long-time legislative bid barring science advisors from receiving agency research grants.

Ruckelshaus' advice to Pruitt: transparency

"By concealing his efforts, even innocent actions create an air of suspicion, making it difficult for a skeptical public to give him the benefit of the doubt," Ruckelshaus says of Pruitt.

Environmentalists push EPA to complete delayed TSCA bans

Environmentalists are pressing the Trump EPA to finalize as soon as possible Toxic Substances Control Act bans on three chemicals, citing "well-documented health risks."

EPA to hold hearing on CPP repeal in West Virginia

Seeking public input in an area with some of the most vocal critics of the rule is likely a response to critics' complaints that the Obama EPA avoided coal-heavy states when developing the power sector greenhouse gas rule.

Ewire: Top Trump environment nominees poised for Senate hearing

In today's Ewire: Senators plan to hold a confirmation hearing next week for Trump picks for EPA and the White House Council on Environmental Quality. Plus: Pruitt's former professor offers a "lament."

EPA advisors to choose between panel service or grants

EPA says roughly 20 current advisory panel members will have to choose between keeping their agency grants or continuing to serve on the committees.

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Mailing address: 1919 South Eads Street, Suite 201, Arlington VA 22202

Telephone: 703-416-8500 or 1-800-424-9068

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Message

From: Rae, Sarah [Rae.Sarah@epa.gov]
Sent: 9/4/2019 6:32:41 PM
To: Makepeace, Caroline [Makepeace.Caroline@epa.gov]
CC: Denton, Loren [Denton.Loren@epa.gov]; Pollins, Mark [Pollins.Mark@epa.gov]; Theis, Joseph [Theis.Joseph@epa.gov]
Subject: RE: Hattiesburg
Attachments: Hattiesburg MS 09 04 2019.docx

Caroline,

I got the OK from my counterpart in R4. Here is the updated draft.

Sarah Rae

Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
Rae.Sarah@epa.gov

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Wednesday, September 04, 2019 2:21 PM
To: Rae, Sarah <Rae.Sarah@epa.gov>
Subject: Re: Hattiesburg



Sent from my iPhone

On Sep 4, 2019, at 2:16 PM, Rae, Sarah <Rae.Sarah@epa.gov> wrote:

good catch! Will do.

Sarah Rae

Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
Rae.Sarah@epa.gov

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Wednesday, September 04, 2019 2:16 PM
To: Rae, Sarah <Rae.Sarah@epa.gov>
Subject: RE: Hattiesburg

Ex. 5 AC/AWP/DP

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Rae, Sarah <Rae.Sarah@epa.gov>
Sent: Wednesday, September 04, 2019 1:49 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: Hattiesburg

Caroline – here is what I just put together and sent to my counterpart in R4 for review. I will send you the final version when it is ready!

Sarah Rae
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
Rae.Sarah@epa.gov

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Wednesday, September 04, 2019 1:47 PM
To: Rae, Sarah <Rae.Sarah@epa.gov>
Subject: RE: Hattiesburg

Ex. 5 AC/AWP/DP

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Rae, Sarah <Rae.Sarah@epa.gov>
Sent: Wednesday, September 04, 2019 1:11 PM

To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>

Subject: RE: Hattiesburg

Thanks! I will work on updating this now.

Sarah Rae

Attorney-Adviser

United States Environmental Protection Agency

OECA - OCE - Water Enforcement Division

WJC South 3110B (Mail Code 2243-A)

1200 Pennsylvania Avenue NW

Washington, DC 20004

(202) 564-2841 (FAX 202-564-0018)

Rae.Sarah@epa.gov

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>

Sent: Wednesday, September 04, 2019 1:10 PM

To: Rae, Sarah <Rae.Sarah@epa.gov>

Subject: Hattiesburg

Sarah –

Attached is a (one of many...) cheat sheet that has the language james provided re the SEP's benefits and impacts.

Caroline Makepeace

Senior Counsel

Office of Civil Enforcement

US Environmental Protection Agency

202-564-6012

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Message

From: Argentieri, Sabrina [argentieri.sabrina@epa.gov]
Sent: 9/4/2019 2:46:44 PM
To: Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: Monthly Air Attorney Enforcement Call

Ex. 6 Personal Privacy (PP)

Now on to a less pleasant topic, how is the pulling together of some cognizable guidance for DOJ's new SEP policy going? Is the topic ripe for a summary on tomorrow's EPA air attorney call?

I heard through the grapevine that the AAG has some protocols in place for mitigation projects now. If you didn't hear about that, give me a buzz.

Sabrina Argentieri
Attorney-Advisor
U.S. EPA Office of Civil Enforcement
Air Enforcement Division
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 564-8953

Message

From: Porter, Amy [Porter.Amy@epa.gov]
Sent: 8/29/2019 8:52:53 PM
To: Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: RE: SEP follow up

Great email – thank you.

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Thursday, August 29, 2019 4:48 PM
To: karen.dworkin@usdoj.gov; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>
Subject: RE: SEP follow up

Hi Karen,

Ex. 5 AC/AWP/DP

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Dworkin, Karen (ENRD) <Karen.Dworkin@usdoj.gov>
Sent: Thursday, August 29, 2019 2:37 PM
To: Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Subject: SEP follow up

Hi. I see Rosemarie is out today. Forwarding this for any info you have on the call yesterday, and any initial reactions to the below. Hoping this is something we can finalize and get out to our folks as early as tomorrow. Karen.

From: Dworkin, Karen (ENRD)

Sent: Thursday, August 29, 2019 12:56 PM

To: 'Kelley, Rosemarie' <Kelley.Rosemarie@epa.gov>

Subject: time for a SEP follow up call today?

Ex. 5 AC/AWP/DP

Message

From: Powers, Emily (ENRD) [Emily.Powers@usdoj.gov]
Sent: 8/29/2017 3:14:10 PM
To: Fentress, Robert [Fentress.Robert@epa.gov]
CC: Robers, Brandon (ENRD) [Brandon.Robers@usdoj.gov]; Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: RE: Corpus - DRAFT CD Redline and DRAFT Appendices

Ex. 5 AC/AWP/DP

From: Fentress, Robert [mailto:Fentress.Robert@epa.gov]
Sent: Tuesday, August 29, 2017 10:56 AM
To: Powers, Emily (ENRD) <EPowers@ENRD.USDOJ.GOV>
Cc: Robers, Brandon (ENRD) <BRobers@ENRD.USDOJ.GOV>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: FW: Corpus - DRAFT CD Redline and DRAFT Appendices

Ex. 5 AC/AWP/DP

Robert D. Fentress

Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-7023
fentress.robert@epa.gov

NOTE: This transmission may contain deliberative, attorney-client communications, attorney work-product, or otherwise privileged material. Do not release under FOIA without appropriate review. If this message has been received by you in error, please delete it from your machine as well as from all storage media whether electronic or hard copy.

From: Powers, Emily (ENRD) [mailto:Emily.Powers@usdoj.gov]
Sent: Monday, August 28, 2017 10:48 AM
To: Zimny, James <zimny.james@epa.gov>
Cc: Robers, Brandon (ENRD) <Brandon.Robers@usdoj.gov>; Fentress, Robert <Fentress.Robert@epa.gov>
Subject: FW: Corpus - DRAFT CD Redline and DRAFT Appendices

James —

Hey there; I hope all is well and that you had a good vacation.

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Thanks, James. We miss you! But hope all is well with your new position.

Emily

From: Powers, Emily (ENRD)

Sent: Tuesday, February 21, 2017 5:03 PM

To: jdelafuente@lglawfirm.com; Nathan Vassar <nvassar@lglawfirm.com>

Cc: Robers, Brandon (ENRD) <BRobers@ENRD.USDOJ.GOV>

Subject: Corpus - DRAFT CD Redline and DRAFT Appendices

Joe and Nathan –

Attached is the United States' redline response to the last draft of the CD submitted to the US on November 30, 2017. Additionally, I am attaching all draft CD appendices that are in our court. The appendices drafted in Visio are pdfs and the other appendices are in word, with changes tracked and/or comments (as appropriate). Appendix K (Capacity Report) was easier to edit as a pdf, so it remains so – with comments. (And please forgive the incorrect headers on the Visio-produced files; I am a novice at that program and couldn't figure out how to change them (you'll see what I mean)).

To help you understand what is going on in the redline, I created it by accepting all of the changes in your Nov. 30 draft, deleting your comments, and then doing a "compare" with a clean version of our latest draft. This reveals what differences there are between your last draft and our current draft.

I have flagged a couple of issues, but overall know that we will need to have a telephone call to walk through the changes and identify any new or outstanding issues to be resolved before we can reach a final settlement for recommendation to our respective authorities.

Let's visit about setting up a time to talk, ideally early next week, that will work for everyone.

Thanks.

Emily

Emily C. Powers

Trial Attorney

Environmental Enforcement Section

Environment and Natural Resources Division

United States Department of Justice

P.O. Box 7611 Ben Franklin Station

Washington, DC 20044-7611

phone: (202) 616-3168

fax: (202) 616-6584

emily.powers@usdoj.gov

Message

From: Porter, Amy [Porter.Amy@epa.gov]
Sent: 8/27/2019 8:45:22 PM
To: Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: RE: FYI TheHill.com: Trump admin erases key environmental enforcement tool

OMG that didn't even cross my mind!

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Tuesday, August 27, 2019 4:37 PM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Cc: Porter, Amy <Porter.Amy@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>
Subject: Re: FYI TheHill.com: Trump admin erases key environmental enforcement tool

Thx, RK, good idea to ask the question!

Sent from my iPhone

On Aug 27, 2019, at 4:25 PM, Kelley, Rosemarie <Kelley.Rosemarie@epa.gov> wrote:

George -

Ex. 5 Deliberative Process (DP)

Rosemarie

Begin forwarded message:

From: "Makepeace, Caroline" <Makepeace.Caroline@epa.gov>
Date: August 27, 2019 at 3:06:13 PM EDT
To: "Kelley, Rosemarie" <Kelley.Rosemarie@epa.gov>, "Porter, Amy" <Porter.Amy@epa.gov>, "Koslow, Karin" <Koslow.Karin@epa.gov>, "Fogarty, Johnpc" <Fogarty.Johnpc@epa.gov>
Cc: "Buterbaugh, Kristin" <Buterbaugh.Kristin@epa.gov>
Subject: FYI TheHill.com: Trump admin erases key environmental enforcement tool

From TheHill.com: <https://thehill.com/policy/energy-environment/458317-trump-admin-erases-key-environmental-enforcement-tool> Note that it says EPA did not "return a request for comment."

The Department of Justice (DOJ) is doing away with an enforcement tool that has been used in the past to get states and localities into compliance with environmental laws.

Assistant Attorney General Jeffrey Bossert Clark announced Wednesday in an internal letter obtained by The Hill that the agency will no longer utilize Supplemental Environmental Projects (SEPs) in settlements with state and local government polluters.

The enforcement tool is often offered in settlements with industries and states that violate environmental laws such as the Clean Water Act and allows them the opportunity to pay

lower fines by instituting actions such as environmental cleanups or infrastructure upgrades.

The DOJ letter addressed to environmental enforcement staff criticized the tool, used frequently under the Obama administration, as going "beyond what is required under federal, state, or local laws."

"By definition, a SEP goes beyond what is required under federal, state, or local laws ... and thus exceeds what could be obtained through agency enforcement authority or by litigating a matter to judgment," Clark wrote.

E&E News was the first to report on the letter.

Critics, including some congressional Republicans, have argued the SEP program chooses clean energy favorites by putting revenue into the pockets of unrelated industries.

For example, in the 2016 landmark Volkswagen emissions cheating case, the car company settled with the EPA for \$14.7 billion for its diesel vehicles violating Clean Air Act regulations. As part of that settlement, \$2.7 billion was paid toward a nitrogen oxide reduction program, giving states money toward a clean transportation program including electric vehicles.

House lawmakers in 2018 attempted to pass the "Stop Settlement Slush Funds Act," which would have prohibited SEPs and other third-party payments from being paid under environmental settlements. The bill was never taken up in the Senate, but it was referenced in the DOJ memo.

In most instances where entities are charged with failing to comply with environmental standards, the dispute is resolved through a settlement or consent decree with the DOJ. Both typically include some sort of monetary penalty. Critics have also argued that SEPs limit the dollar amount owed to the Treasury Department through those settlements by redirecting dollars to other indirect areas.

"SEPs are debated devices that many members of Congress and academic commentators view as mechanisms for sidestepping the power of the purse," the DOJ memo reads.

"SEPs involving state and local government defendants therefore unambiguously fall within the core of the Attorney General's November 2018 Policy, and are precluded, absent the granting of an exception based on other considerations," it continues.

The directive is the latest policy change to come from the Trump administration regarding polluter enforcement. EPA Administrator Andrew Wheeler as well as leadership at the EPA's Office of Enforcement and Compliance Assurance (OCEA) have been vocal in their preference for pollution mitigation efforts over direct enforcement. That preference is reflected in the agency's dwindling annual enforcement data. OCEA has also introduced in the past year a series of changes to its polluter self-audit program, including one developed specifically for the oil and gas industry.

The policy also appears to build off a 2018 memo by then-Attorney General Jeff Sessions, who said the settlements deprived localities of the ability to decide their own policy issues.

Eric Schaeffer, executive director of the Environmental Integrity Project and a former director of the EPA's Office of Civil Enforcement, said the directive is "consistent" with the Trump administration's environmental approach but argues it also has embraced the tool to some extent.

"They've argued its 'coercive,' and some of that comes from right-wing bloggers and groups like Competitive Enterprise Institute. That explains why they don't want to raise the concept with industry. On the other hand, they seem quite happy to give the industry credit for SEP's that don't really seem to pass muster under the existing policy or under the argument we heard from Republicans in the House that penalty dollars aren't supposed to be diverted to SEPs," Schaeffer told The Hill.

An employee within the EPA's enforcement office likened the SEP directive to a "chill" in the agency.

"Over many years there have been a lot of good projects in communities that benefit the environment beyond putting money in the Treasury. And right now there's a real chill," the source said.

The EPA did not return a request for comment on the SEP policy change

Message

From: Porter, Amy [Porter.Amy@epa.gov]
Sent: 8/27/2019 8:05:47 PM
To: Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: RE: FYI TheHill.com: Trump admin erases key environmental enforcement tool

Thank you!

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Tuesday, August 27, 2019 3:06 PM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>
Cc: Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>
Subject: FYI TheHill.com: Trump admin erases key environmental enforcement tool

From TheHill.com: <https://thehill.com/policy/energy-environment/458317-trump-admin-erases-key-environmental-enforcement-tool> Note that it says EPA did not "return a request for comment."

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"Over many years there have been a lot of good projects in communities that benefit the environment beyond putting money in the Treasury. And right now there's a real chill," the source said.

The EPA did not return a request for comment on the SEP policy change

Message

From: Porter, Amy [Porter.Amy@epa.gov]
Sent: 8/27/2019 2:59:22 PM
To: Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: RE: XPS General 9am

Of course. I'm in meetings until 11:45.

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Tuesday, August 27, 2019 10:58 AM
To: Porter, Amy <Porter.Amy@epa.gov>
Subject: RE: XPS General 9am

Can we talk?

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Porter, Amy <Porter.Amy@epa.gov>
Sent: Tuesday, August 27, 2019 10:37 AM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: XPS General 9am

Ex. 5 Deliberative Process (DP)

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Tuesday, August 27, 2019 10:34 AM
To: Porter, Amy <Porter.Amy@epa.gov>
Subject: RE: XPS General 9am

Ex. 5 Deliberative Process (DP)

Ex. 5 AC/DP

Ex. 5 AC/DP

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Porter, Amy <Porter.Amy@epa.gov>
Sent: Tuesday, August 27, 2019 10:24 AM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: XPS General 9am

I'm not following – were you tasked with writing talking points for the EDRC call?

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Tuesday, August 27, 2019 10:14 AM
To: Porter, Amy <Porter.Amy@epa.gov>
Subject: RE: XPS General 9am

Actually, I was annoyed at having wasted time and effort struggling with this, which is very tricky.... And ending up just being out of the loop!

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Porter, Amy <Porter.Amy@epa.gov>
Sent: Tuesday, August 27, 2019 10:12 AM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: XPS General 9am

No problem.

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Tuesday, August 27, 2019 9:53 AM
To: Porter, Amy <Porter.Amy@epa.gov>
Subject: Re: XPS General 9am

Shoot, I didn't come to general cause it wasn't on agenda. Have been typing away trying to find the right message.

Sent from my iPhone

On Aug 27, 2019, at 9:43 AM, Porter, Amy <Porter.Amy@epa.gov> wrote:

FYI – SEPs on EDRC call tomorrow. Susan will give update

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Tuesday, August 27, 2019 9:09 AM
To: Porter, Amy <Porter.Amy@epa.gov>
Subject: RE: XPS General 9am

Phew! So happy to hear.

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Porter, Amy <Porter.Amy@epa.gov>
Sent: Tuesday, August 27, 2019 9:08 AM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: XPS General 9am

Much better!! Thank you!

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Tuesday, August 27, 2019 9:03 AM
To: Porter, Amy <Porter.Amy@epa.gov>
Subject: Re: XPS General 9am

How're you feeling?

Sent from my iPhone

On Aug 27, 2019, at 8:38 AM, Porter, Amy <Porter.Amy@epa.gov> wrote:

AGENDA
XPS General 8/27/19
Call in number 1 (202) 991-0477 Conference ID 2188530

1. Accomplishments
2. Penalty Inflation Workgroup
3. Agency Financial Report
4. Region 8-OCE Lean Check-In -- 8/28 (1:00-2:00)
5. Tribal UST Pilot
6. Informal Package
7. Chesapeake
8. Management and Personnel

Amy Porter, Director
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-2431

Message

From: Argentieri, Sabrina [argentieri.sabrina@epa.gov]
Sent: 8/27/2019 1:36:01 PM
To: Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: RE: DOJ Muni SEP (or no SEP) Policy

Normally, yes. But I don't want to add days back on to the calendar right now . . .

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Tuesday, August 27, 2019 9:35 AM
To: Argentieri, Sabrina <argentieri.sabrina@epa.gov>
Subject: Re: DOJ Muni SEP (or no SEP) Policy

You wish it was the beginning of summer, not the end? ..)

Sent from my iPhone

On Aug 27, 2019, at 9:34 AM, Argentieri, Sabrina <argentieri.sabrina@epa.gov> wrote:

Yes! No idea where June came from.

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Tuesday, August 27, 2019 9:29 AM
To: Argentieri, Sabrina <argentieri.sabrina@epa.gov>
Subject: Re: DOJ Muni SEP (or no SEP) Policy

Sept 5?

Sent from my iPhone

On Aug 27, 2019, at 9:18 AM, Argentieri, Sabrina <argentieri.sabrina@epa.gov> wrote:

Thursday, June 5th at 2:30 ET.

I feel like a journalist looking for the scoop. I hope it is well-timed, because really, I just want topics that won't bore my audience. ☺

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Tuesday, August 27, 2019 9:16 AM
To: Argentieri, Sabrina <argentieri.sabrina@epa.gov>
Subject: RE: DOJ Muni SEP (or no SEP) Policy

When is the call? Things are still developing, in terms of instructions and guidance. It may be premature, or well-timed.

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Argentieri, Sabrina <argentieri.sabrina@epa.gov>
Sent: Tuesday, August 27, 2019 9:13 AM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: DOJ Muni SEP (or no SEP) Policy

Good morning, maybe.

I'm lining up topics for the monthly internal air enforcement attorneys call. Thinking about putting the DOJ memo re muni SEPs on the agenda. Do you know of someone at DOJ who I can ask to give a 20 minute presentation? It would be good to also have you provide an update on what's been happening with SEPs in general over the last month – but I won't put that on you if the thought makes you shudder.

Sabrina Argentieri
Attorney-Advisor
U.S. EPA Office of Civil Enforcement
Air Enforcement Division
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 564-8953

Message

From: Brown, Stephanie [Brown.Stephanie@epa.gov]
Sent: 8/23/2019 12:28:49 PM
To: Miles, James [miles.james@epa.gov]; Baney, Tony [Baney.Tony@epa.gov]; Presler, Amos [presler.amos@epa.gov]
CC: Sullivan, Greg [Sullivan.Greg@epa.gov]; Saenz, Diana [Saenz.Diana@epa.gov]; Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: SEP Limitations— Fwd: The Morning Headlines from InsideEPA.com -- August 23, 2019

Hello. FYI. Also discussed potential for additional limitations.

=====

DOJ Narrows Use Of SEPs In Municipal Settlements, Eyes Further Limits

August 22, 2019

The Justice Department (DOJ) is further scaling back use of supplemental environmental projects (SEPs) in settlements with local government agencies, and signaling possible additional limits in the future, measures that are likely to draw opposition from municipal groups, who favor SEPs in consent decrees to mitigate penalties. In an **Aug. 21 memo**, Assistant Attorney General for Environment and Natural Resources Jeffrey Bossert Clark rejected claims that a 2018 water infrastructure law allows the use of SEPs and renewed prior requirements that settlements that include SEPs must win top-level approval.

But he also issued additional criteria that the memo says will apply to “rare” case-by-case approval of SEPs, characterizing the criteria as “interim” while DOJ continues a broader review of the issue.

Clark’s memo, which was first reported by *E&E News*, builds on a November 2018 policy from then-Attorney General Jeff Sessions specifying that settlements with municipal entities with SEPs require approval from the associate attorney general of DOJ’s Environment and Natural Resources Division (ENRD).

As such, the memo serves as further confirmation of a Trump administration shift away from prior assurances DOJ had provided municipal attorneys that broader DOJ efforts to limit SEPs would generally not target settlements with local governments.

As *Inside EPA* first reported, industry attorneys had raised concerns that such a policy may be in the works as **DOJ had been rejecting** SEPs in settlements with local government agencies.

And one attorney familiar with the issue says the memo’s reasoning will also be closely watched to the extent it both implements and foreshadows efforts to limit SEPs, not just with municipalities, but more broadly in enforcement settlements.

Critics of SEPs claim that their flaws include enabling “sweetheart deals” with environmentalists and allowing enforcement efforts to go beyond what would otherwise be obtainable under existing laws.

But SEP defenders argue that they have often been crucial tools in achieving otherwise difficult-to-negotiate agreements with both governments and private industry, and that the inability to use them could simply spur more litigation and higher enforcement penalties for both municipal governments and other defendants.

EPA’s SEP policy “allows for a consent decree to include a SEP to mitigate a civil penalty or stipulated penalties,” the National Association of Clean Water Agencies (NACWA), a group that represents municipal water systems, said in a **statement** responding to *Inside EPA*’s initial reports. “SEPs are an important way for a clean water agency to use funds locally that would otherwise go to the Federal Treasury.”

It adds that NACWA has been engaged with EPA regarding this development “and confirmed that the Agency remains in favor of the use of SEPs.”

America’s Water Infrastructure Act

Beginning with a 2017 Sessions memo, the Trump administration has sought to limit use of SEPs in settlement. Sessions’ June 2017 memo broadly banned settlements that include payments to third parties, and a January 2018 memo from then-acting ENRD chief Jeff Woods applied the 2017 memo to DOJ’s environment division while including exceptions to the payment ban in response to industry blowback.

A November 2018 DOJ policy barred use of consent decrees to achieve “general policy goals or to extract greater or different relief from the defendant than could be obtained through agency enforcement authority or by litigating the matter to judgment.”

DOJ in its new memo, “Using Supplemental Environmental Projects (‘SEPs’) in Settlements with State and Local Governments,” targets what it says are recent claims by SEP defenders, including municipalities, that the 2018 America’s Water Infrastructure Act (AWIA) approved use of SEPs when it authorized municipalities to streamline Clean Water Act compliance obligations through integrated planning.

AWIA, which President Donald Trump signed into law Oct. 23, 2018, included provisions addressing CWA infrastructure funding but did not address integrated planning. The **Water Infrastructure Improvement Act**, which Congress passed in late 2018 and Trump signed in January, codified EPA’s integrated planning policy and requires EPA to promote the use of “green infrastructure” in a variety of settings, including enforcement. Green infrastructure projects sometimes have been included as SEPs in EPA and DOJ enforcement agreements. The memo also disputes the notion that SEPs are excluded from DOJ review because EPA will agree to them in non-judicial administrative settlements.

“For the reason’s explained herein, these arguments that SEPs should be exempted from the November 2018 Policy are unpersuasive,” writes Bossert Clark, noting with respect to the 2018 water law that it does not mention SEPs in its text. “[T]he language of the 2018 Clean Water Act amendment is far from clear.”

In absence of such clear intent, the memo argues, SEPs intrude on Congress’s constitutional power of appropriations, as well as the Miscellaneous Receipts Act and Anti-Deficiency Act, by potentially reducing monetary penalties that might otherwise flow into the federal Treasury.

And his language on this point embraces claims by critics that would apply to SEPS more broadly -- not just in agreements with local governments --- expressing doubt that if Congress had intended to allow SEPs as devices to “circumvent” the Miscellaneous Receipts Act, it would not have done so without mentioning SEPs by name. Bossert Clark also argues that reading the 2018 CWA amendments to override the 2018 policy would “intrude on the authority of the attorney general to control and resolve litigation, he also offers “sound public policy” reasons for disapproving SEPs in cases involving government defendants, including “ensuring that local officials are held accountable for using local taxpayer funds on otherwise on required projects, without clear authorization state or municipal law to do so.”

And other language appears to take a swipe at SEPs not just in the context of judicial settlements, but EPA administrative settlements, as Bossert Clark pushes back against arguments from defenders that SEPs should be excluded from the reach of the November 2018 DOJ review policy because they are part of the agency’s enforcement authority.

“EPA lacks the enforcement authority to extract a SEPs from a defendant in any setting. This is true whether that setting is an administrative or a judicial one.”

Interim Step

A memo footnote also telegraphs that the document is an interim step to broader SEP policy changes. “I am considering revocation of (or revisions to) the January 2018 memorandum to make it more closely adhere to the November 2018 policy,” Bossert Clark says, as well as to the legislative aims of legislation known as the “Stop Settlement Slush Funds bill.”

“Revisions may include a clarification that the prohibition in the Attorney General’s 2017 policy payments to third parties includes in-kind payments such as those in SEPs.”

And the new DOJ memo also specifies several additional requirements for case-by-case DOJ approval of SEPs with government entities -- beyond those already stated in the November 2018 and June 2017 Sessions policies -- that apply if EPA seeks exceptions to a general prohibition on SEP, during an “interim period” while the broader review of SEP policy is underway.

The criteria include that SEPs are “discrete projects” representing “a small component of the overall settlement and be included only as “a last resort.”

SEPs negotiated before issuance of the 2018 policy require EPA to demonstrate that removal of a SEP from a “nearly completed agreement” would jeopardize the deal or harm “the interests of the United States.”

And SEPs negotiated after issuance of the November 2018 Policy require a demonstration that settlement would not be possible without them.

Additional criteria specify that the SEPS should provide “broad benefits to the community, not individuals,” and that a government defendant “should certify that the SEPs do not violate any direct or implied restriction imposed by local, state or federal law.”

“Even if the proposed SEPs satisfy these limitations, there is no guarantee that I will recommend approval of a settlement with the state or local government that include SEPs,” Bossert Clark continues.

“The bottom line is that Congress has not expressly authorizes use of SEPS, either generally or specifically, in Clean Water Act enforcement actions against municipalities operating sewer systems. In the absence of congressional approval, there are compelling legal and policy reasons mitigating against the use of SEPs in settlements or consent decrees with state and local governments.” -- *Doug Obey*(dobey@iwpnews.com)

=====

Stephanie Brown
OECA/OCE/WCED

Begin forwarded message:

From: "InsideEPA.com" <insideepa-alerts@iwpnews.com>
Date: August 23, 2019 at 7:15:25 AM EDT
To: brown.stephanie@epa.gov
Subject: The Morning Headlines from InsideEPA.com -- August 23, 2019
Reply-To: insideepa-alerts@iwpnews.com



August 23, 2019

The Weekly Focus

Trump Backers Downplay California Auto GHG Deal Amid Industry Unease

Supporters of the Trump administration's bid to freeze Obama-era vehicle greenhouse gas and fuel economy rules are seeking to downplay the significance of California's voluntary deal with four major automakers on the issue, despite increasing signs that other auto companies might join the pact or spurn the Trump rollback.

Latest News

DOJ Narrows Use Of SEPs In Municipal Settlements, Eyes Further Limits

The Justice Department (DOJ) is further scaling back use of supplemental environmental projects (SEPs) in settlements with local government agencies, and signaling possible additional limits in the future, measures that are likely to draw opposition from municipal groups, who favor SEPs in consent decrees to mitigate penalties.

EPA Proposes Flexible Landfill Methane Plan, But Delays Compliance Dates

EPA in a new proposed rule outlines flexible compliance options for states and industry to follow in a federal plan for limiting methane emissions from municipal solid waste (MSW) landfills, but the rule may prove moot given the agency's recent extensions of compliance dates for states to issue their own plans or face direct federal standards.

In First, Court Faults Obama-Era CWA Jurisdiction Rule, Orders Fixes

A federal court in Georgia has, for the first time, found the Obama-era Clean Water Act (CWA) jurisdiction rule violates several aspects of the water law and administrative law, but rather than vacating the rule, the court is ordering officials to continue their plans to revise the rule "in light of the serious defects identified in this Order while leaving this Court's existing preliminary injunction in place."

EPA Urges Regions To Step Up Actions To Reduce NPDES Noncompliance

EPA enforcement chief Susan Bodine is urging the agency's regional offices to begin meeting regularly with states to develop plans to reduce significant noncompliance (SNC) with Clean Water Act discharge permit requirements, in order to meet a national goal of cutting in half the existing SNC rate of 29.4 percent by the end of fiscal year 2022.

Daily Feed

Dow federal affairs chief picked to lead EPA Region 1

Dennis Deziel, who has served as head of federal government affairs for Dow since 2014, will take over as Regional Administrator for the New England states.

Court rejects FOIA suit to force release of vehicle GHG model

Environmentalists have lost their bid to force release of an EPA computer model they argue would help undermine the agency's efforts to roll back Obama-era vehicle greenhouse gas standards.

EPA formally declines to set CWA spill requirements

The agency rejected calls from state emergency responders and environmentalists who argue a rule is needed to prevent chemical spills like the one that closed Charleston's, WV, drinking water system in 2014.

Ewire: Inslee ends 2020 bid as Sanders offers ambitious climate plan

In today's Ewire: The twin developments further underscore the extent to which climate issues are resonating with the 2020 Democratic field.

D.C. Circuit sets argument for 2015 ozone NAAQS designations suit

The U.S. Court of Appeals for the District of Columbia Circuit will hear oral argument on Nov. 6 in consolidated litigation challenging EPA's designations of which areas are attaining the 2015 ozone standard.

Environment Next

Lead Batteries' Top Sustainability Score May Be Model For Other Sectors

A global non-profit organization that assesses the sustainability of consumer products is awarding widely used lead-acid batteries one of its highest scores as the most recycled consumer product, a significant finding that experts suggest could be a model for other sectors as they weigh steps to participate in the emerging circular economy.

From The Editor

Green New Deal Versus Industry-Led Plans: Can't We All Just Get Along?

Democrats and Republicans have significantly different plans for how to address climate change and other major environmental problems, with many progressives pitching a Green New Deal (GND) with heavy government involvement while the GOP pushes for industry-led or voluntary plans -- but why can't we all get along and combine them?

Read all the latest EPA news, analysis and documents →

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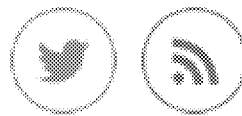
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Message

From: Holmes, Carol [Holmes.Carol@epa.gov]
Sent: 8/21/2019 6:04:43 PM
To: OECA-OCE-XPS [OECA-OCE-XPS@epa.gov]
Subject: FW: DOJ just issued a new memo on Using Supplemental Environmental Projects ("SEPs") in Settlements with State and Local Governments
Attachments: DOJ SEP Memo 8 21 19.pdf

Sharing with XPS now, but will let Rosemarie send whatever cover note she may want to all of OCE.

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Carol S. Holmes
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement (MC 2241A)
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460
Phone (202) 564-8709

From: Holmes, Carol
Sent: Wednesday, August 21, 2019 1:57 PM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Cc: Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>
Subject: RE: DOJ just issued a new memo on Using Supplemental Environmental Projects ("SEPs") in Settlements with State and Local Governments

Here is a Greenwire Article and the memo

The Trump administration is narrowing a long-standing federal practice of letting polluters do penance for their environmental violations, often in exchange for lower fines.

Jeffrey Bossert Clark, head of the Justice Department's environment division, outlined the policy change in a memo today, specifically targeting "supplemental environmental projects," or SEPs, in legal settlements with state and local governments.

SEPs work as general offsets for some of the harm associated with a violation of the Clean Air Act, the Clean Water Act or other federal law. Instead of simply fixing the infraction and paying a fine that goes into general government coffers, a violator can fix the infraction, volunteer to do an EPA-approved project with environmental benefits, and usually pay a smaller fine.

Those on-the-ground benefits and lower penalties make SEPs popular among enforcement officials, environmental groups and polluters alike. Government lawyers have used them in settlement negotiations for 25 years.

But Clark's memo bars the use of SEPs in federal settlements with state and local governments — voicing ideological concerns about SEPs that have percolated in conservative circles for decades.

Critics say Clark's move will eliminate opportunities to help communities affected by pollution and may hamstring enforcement officials in settlement negotiations.

The policy change builds upon 2018 guidelines from then-Attorney General Jeff Sessions, who said settlements that direct states, cities and counties to go beyond simple compliance with federal laws can deprive local elected officials and voters of the opportunity to decide their own local policy issues.

"SEPs involving state and local government defendants therefore unambiguously fall within the core of the Attorney General's November 2018 Policy, and are precluded, absent the granting of an exception based on other considerations," Clark wrote in today's memo.

The curtailment of SEPs follows recent controversy and confusion over their use. An earlier directive from Sessions barred DOJ lawyers from requiring defendants to make payments to third parties. Jeff Wood, who was then acting head of DOJ's Environment and Natural Resources Division, issued a follow-up memo clarifying that SEPs didn't constitute third-party payments and were therefore still acceptable.

Around the same time, House lawmakers approved the "Stop Settlement Slush Funds Act," which would have prohibited third-party payments and specified that SEPs did fall in that category. Bill supporters argued that SEPs illegally redirect money that would have landed in federal accounts. The proposal never advanced in the Senate.

Clark referenced that debate in today's memo, noting that Congress has never explicitly authorized SEPs. He also rejected an argument that lawmakers gave their blessing through 2018 Clean Water Act amendments that obliquely reference the tools.

The memo includes a footnote that says Clark is considering whether to prohibit SEPs entirely. For now, though, the restriction applies only to SEPs in settlements with state and local governments.

Higher penalties?

The policy shift will change the way government lawyers work out settlements.

Federal enforcement officials would be unable to negotiate a Clean Water Act deal with Chicago, for example, in which the city agreed to conduct a related SEP to offset some of the environmental damage from its violations.

In theory, Chicago would instead pay a higher penalty for its actions. But critics of DOJ's new policy say that's unlikely.

Eric Schaeffer, executive director of the nonprofit Environmental Integrity Project and a former EPA enforcement official, cautioned that the Trump administration will likely seek to keep penalties low *and* eliminate SEPs.

"If they were making people pay and saying, 'We're not doing SEPs anymore, and our theory is this money really belongs to Treasury, so we don't want to offset it with these projects,' then that would be one thing," Schaeffer said. "But that's not what they're doing."

Former DOJ environment chief John Cruden, now at the law firm Beveridge & Diamond PC, noted that while SEPs aren't extremely common in city or state cases, they sometimes serve as a critical tool in resolving a dispute.

He recalled a 1998 case involving Clean Water Act violations by New Orleans. Federal and city lawyers finally reached a settlement after New Orleans agreed to address problems with its sewage system and also conduct a SEP aimed at cleaning up a beach on Lake Pontchartrain.

"There might be some instances where important settlements may either take longer or not happen at all if you do away with all SEPs offered by state and local governments," Cruden said.

Plus, he said, local communities affected by environmental violations could lose out on projects that often benefit them.

"There are many situations — which often raises environmental justice opportunities — where SEPs allow the federal government to obtain related relief for local communities and adversely impacted residents that would not otherwise be available," he said.

Clark's memo acknowledges many of the policy arguments supporting SEPs, noting that they can be useful enforcement tools and are often favored by local governments. But he concluded that they should be subject to "close, case-by-case scrutiny."

"SEPs can be seen as challenging the congressional power of the purse by, in essence, redirecting funds from the United States Treasury in exchange for projects that Congress has not approved. Perhaps if asked, Congress would authorize funds for diesel emission reduction projects, to take one example," he wrote. "But Congress may also prefer to spend those funds on, say, a new aircraft carrier or on ending the opioid epidemic.

"Absent a clearly expressed intention from Congress to delegate money-redirection authority to the Executive Branch, Congress' wishes should be respected."

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Carol S. Holmes
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement (MC 2241A)
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460
Phone (202) 564-8709

From: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Sent: Wednesday, August 21, 2019 1:53 PM
To: Holmes, Carol <Holmes.Carol@epa.gov>
Subject: FW: DOJ just issued a new memo on Using Supplemental Environmental Projects ("SEPs") in Settlements with State and Local Governments

I should have included you on this email given that Amy is out.

From: Kelley, Rosemarie
Sent: Wednesday, August 21, 2019 1:26 PM
To: Regional Counsels and Deputies <Regional_Counsels_and_Deputies@epa.gov>; OECA-OCE-MANAGERS <OECAOCEMANAGERS@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; ECAD Directors and Deputies <ECAD_Directors_and_Deputies@epa.gov>; OECA Office Directors and Deputy Directors <OECA_Office_Directors_and_Deputy_Directors@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Susan Bodine (bodine.susan@epa.gov) <bodine.susan@epa.gov>
Cc: Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>
Subject: DOJ just issued a new memo on Using Supplemental Environmental Projects ("SEPs") in Settlements with State and Local Governments

All—

I want to let you know that DOJ just issued a memo on Using Supplemental Environmental Projects ("SEPs") in Settlements with State and Local Governments minutes ago.

More to come on next steps, but I thought you should know about this memo.

Rosemarie

Regards,
Rosemarie A. Kelley, Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
202-564-4014

Message

From: Porter, Amy [Porter.Amy@epa.gov]
Sent: 8/9/2019 2:17:17 PM
To: OECA-OCE-XPS [OECA-OCE-XPS@epa.gov]
Subject: FW: DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy

Sending to all of you as an FYI. Please do not forward it.

From: Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Sent: Friday, August 09, 2019 10:16 AM
To: Regional Counsels and Deputies <Regional_Counsels_and_Deputies@epa.gov>; ECAD Directors and Deputies <ECAD_Directors_and_Deputies@epa.gov>
Cc: Koslow, Karin <Koslow.Karin@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>
Subject: FW: DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy

RC and ECAD colleagues:

I wanted to make you aware of this story on SEPs from InsideEPA, as you may get similar inquiries from outside parties or the press. FYI, our response to InsideEPA was the following:

EPA has not changed its 2015 policy regarding supplemental environmental projects (SEPs) in settlement agreements. A SEP is a beneficial environmental project or activity to which a party agrees that goes beyond what could legally be required in order for the party to return to compliance. On November 7, 2018, former Attorney General Jeff Sessions issued a Department of Justice (DOJ) policy entitled *Principles and Procedures for Civil Consent Decrees and Settlement Agreements with State and Local Governmental Entities* – see <https://www.justice.gov/opa/pr/justice-department-releases-memorandum-litigation-guidelines-civil-consent-decrees-and>. As a policy matter, DOJ requires that judicial settlements with a state or local entity that include SEPs must first be reviewed and approved by the Associate Attorney General.

Larry



DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy

August 08, 2019

AUSTIN, TX -- The Department of Justice (DOJ) is rejecting supplemental environmental projects (SEPs) in settlements it is negotiating with local governmental agencies, a move that appears to undercut department policy that says it will approve the projects as part of deals provided they comply with EPA's SEP policy, attorneys say.

The rejections have begun being communicated over the past month, according to one industry attorney familiar with negotiations in several clean water settlements between DOJ and local governments, coming after years of negotiations where DOJ officials indicated the projects were likely to be approved.

A second source, industry attorney Nathan Vassar, told an Aug. 1 session of the Texas Environmental Superconference here that if attorneys have a SEP to propose as part of a federal settlement, "it will take some real convincing because apparently the ongoing discussions – and this is more at DOJ than it is at EPA -- are that, 'We're not going to allow SEPs as part of the enforcement protocol.'"

Vassar said this marks a change from past practice, when Trump officials told attorneys representing municipalities that their broader efforts to limit the use of SEPs would not generally apply in settlements involving local government entities. "We were told on several occasions, 'On municipal enforcement, if you like your SEP, you can keep your SEP'," he said.

However, that is no longer the case, Vassar said. "We learned just this week, it may be news to some . . . A SEP as a part of an enforcement mechanism is not going to be pursued as a part of this administration."

A DOJ spokesman denies there has been a policy change, saying all department guidance is being followed and declining to comment on whether new guidance has been issued.

DOJ's "Environment and Natural Resources Division [(ENRD)] is following all current [DOJ] memoranda, including those issued by the Division itself and by the Attorney General," the spokesman says.

The spokesman declined to clarify whether that means SEPs can be approved or if there is a new document prohibiting them.

An EPA spokesman says the agency has not changed its 2015 policy regarding use of SEPs in settlement agreements. But the spokesman noted that former Attorney General Jeff Sessions, in a 2018 policy, had required that "judicial settlements with a state or local entity that include SEPs must first be reviewed and approved by the Associate Attorney General."

The new prohibition on SEPs renews focus on the issue, which has raised concerns in the past. The concern stemmed initially from Sessions' [June 2017 memo](#) banning settlements that included payments to third parties. Sessions opposed such payments because the parties were "neither victims nor parties to the lawsuits."

Some GOP lawmakers also complained that such settlements amount to "sweetheart deals" for environmental groups that benefitted from SEPs.

But many attorneys warned at the time that the prohibition [would drastically impair their ability to settle](#) EPA-related cases, and they strongly defended SEPs as providing a major incentive for environmental settlements with local both governments and private industry.

For example, some municipal officials [were concerned](#) that any limitation on the use of SEPs would hamper their efforts to expand the use of SEPs to offset stipulated penalties.

EPA Policy

After the uproar, DOJ's then-acting ENRD chief Jeff Woods in [a January 2018 memo](#) clarified exceptions to the payment ban, including [for projects that comply](#) with EPA's 2015 SEP policy.

Then, Sessions in [a November 2018 policy](#) wrote that settlements with municipal entities that included SEPs had to win approval from the associate attorney general for ENRD.

While the policy barring payments to third parties has been implemented, it faces some legal uncertainty as a federal court in Washington, D.C., has [so far declined](#) a DOJ request to drop a SEP from an already approved settlement with Harley Davidson -- more than two years after the request was first made.

Now, industry sources say DOJ is now rejecting approvals of municipal SEPs, raising questions about how to proceed.

"What we are starting to see happen is where we proposed SEPs we thought would be OK, and that everyone indicated were OK, but of course did not have final approval, are now getting rejected," the first industry source says.

DOJ is communicating to these attorneys that the settlements will not be approved if they contain the SEPs, but the source says it is unclear who made the change and why. No one at DOJ "has cited new documents to us," the source says.

It is also unclear whether any of the settling parties will seek to challenge the rejection of the SEPs. "We have to debate, 'Ok do you challenge it and go to higher levels to try to convince [DOJ] why you should be able to do this, or do you just say, 'OK, we're going to put more money in the penalty?'"

These discussions are "just happening now . . . we are engaged in thinking about that right now." The answer will be based on how badly the settling party wants to do the SEP "or whether it can get the case done, pay more money and move on," the source adds. "We have to think about each case and whether it is worth having that fight."

This source has "not had any direct discussions with someone at DOJ or EPA other than being told they are not accepting that SEP."

The attorney notes that including SEPs in local government settlements has "been very valuable" and "helped us get to agreements in situations where municipalities feel very strongly that if they pay money it should go toward the community, and hopefully go to improving water quality for the community, and not get sent to D.C. to go to some federal agency."

City councils are more apt to approve settlements if they include incentives such as SEPs that require tree planting or repairing a sewer line, the source explains. However, it is also unclear, the source notes, whether dropping a SEP at this stage will tank the overarching settlement and result in litigation.

The industry source says when the policies first came out, it appeared they would not restrict SEPs by municipalities unless the governments were paying contractors to do the work, rather than having their own employees do so.

Now, the source says, even if a city employee were to plant trees on private property as part of a SEP, that appears to be prohibited as well, because DOJ "would say you are providing value to that property owner, and that is something you cannot do."

The source adds that if all SEPs are effectively banned, that would "be really unfortunate" because "they helped make it easier to reach agreements and provided real environmental benefits to communities."

The source says it is difficult to identify the universe of threatened SEPs because the Trump DOJ has not initiated many cases, so a lot of the cases being negotiated were started under the Obama administration, continued into Trump "and now we're being told we can't do it."

The source says the policy is less problematic if "it is only the policy for the next year and a half." But if it "lasts into another administration," then it would "affect a lot of cases" and have a "substantial" impact on settlements.

The last case this source was involved with that had a SEP -- which required a city to improve a stream -- was approved by a court in early 2018. -- *Dawn Reeves* (dreeves@iwpnews.com) & *Lee Logan* (llogan@iwpnews.com)

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Message

From: Porter, Amy [Porter.Amy@epa.gov]
Sent: 8/9/2019 2:16:34 PM
To: Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]; Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: FW: DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy

FYI

From: Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Sent: Friday, August 09, 2019 10:16 AM
To: Regional Counsels and Deputies <Regional_Counsels_and_Deputies@epa.gov>; ECAD Directors and Deputies <ECAD_Directors_and_Deputies@epa.gov>
Cc: Koslow, Karin <Koslow.Karin@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>
Subject: FW: DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy

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"What we are starting to see happen is where we proposed SEPs we thought would be OK, and that everyone indicated were OK, but of course did not have final approval, are now getting rejected," the first industry source says.

DOJ is communicating to these attorneys that the settlements will not be approved if they contain the SEPs, but the source says it is unclear who made the change and why. No one at DOJ "has cited new documents to us," the source says.

It is also unclear whether any of the settling parties will seek to challenge the rejection of the SEPs. "We have to debate, 'Ok do you challenge it and go to higher levels to try to convince [DOJ] why you should be able to do this, or do you just say, 'OK, we're going to put more money in the penalty?'"

These discussions are "just happening now . . . we are engaged in thinking about that right now." The answer will be based on how badly the settling party wants to do the SEP "or whether it can get the case done, pay more money and move on," the source adds. "We have to think about each case and whether it is worth having that fight."

This source has "not had any direct discussions with someone at DOJ or EPA other than being told they are not accepting that SEP."

The attorney notes that including SEPs in local government settlements has "been very valuable" and "helped us get to agreements in situations where municipalities feel very strongly that if they pay money it should go toward the community, and hopefully go to improving water quality for the community, and not get sent to D.C. to go to some federal agency."

City councils are more apt to approve settlements if they include incentives such as SEPs that require tree planting or repairing a sewer line, the source explains. However, it is also unclear, the source notes, whether dropping a SEP at this stage will tank the overarching settlement and result in litigation.

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Now, the source says, even if a city employee were to plant trees on private property as part of a SEP, that appears to be prohibited as well, because DOJ "would say you are providing value to that property owner, and that is something you cannot do."

The source adds that if all SEPs are effectively banned, that would "be really unfortunate" because "they helped make it easier to reach agreements and provided real environmental benefits to communities."

The source says it is difficult to identify the universe of threatened SEPs because the Trump DOJ has not initiated many cases, so a lot of the cases being negotiated were started under the Obama administration, continued into Trump "and now we're being told we can't do it."

The source says the policy is less problematic if "it is only the policy for the next year and a half." But if it "lasts into another administration," then it would "affect a lot of cases" and have a "substantial" impact on settlements.

The last case this source was involved with that had a SEP -- which required a city to improve a stream -- was approved by a court in early 2018. -- *Dawn Reeves* (dreeves@iwpnews.com) & *Lee Logan* (llogan@iwpnews.com)

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220946

Message

From: Porter, Amy [Porter.Amy@epa.gov]
Sent: 8/9/2019 1:42:49 PM
To: Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]
CC: Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: FW: DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy

FYI

From: Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Sent: Friday, August 09, 2019 9:40 AM
To: Cozad, David <Cozad.David@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Subject: Fwd: DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy

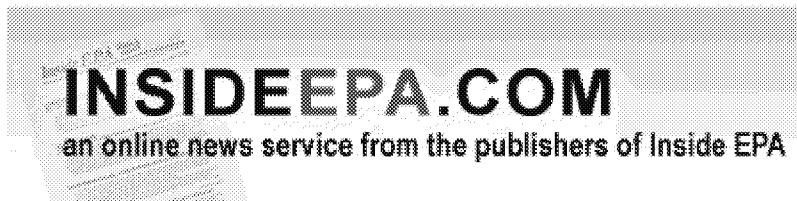
In case you couldn't read the article (I couldn't access it on my phone).

Sent from my iPhone

Begin forwarded message:

From: "Egan, Patrick" <egan.patrick@epa.gov>
Date: August 9, 2019 at 9:10:37 AM EDT
To: "Starfield, Lawrence" <Starfield.Lawrence@epa.gov>
Subject: RE: DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy

Okay. Sorry about that. Here you go. Hopefully this comes through.



DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy

August 08, 2019

AUSTIN, TX -- The Department of Justice (DOJ) is rejecting supplemental environmental projects (SEPs) in settlements it is negotiating with local governmental agencies, a move that appears to undercut department policy that says it will approve the projects as part of deals provided they comply with EPA's SEP policy, attorneys say.

The rejections have begun being communicated over the past month, according to one industry attorney familiar with negotiations in several clean water settlements between DOJ and local governments, coming after years of negotiations where DOJ officials indicated the projects were likely to be approved.

A second source, industry attorney Nathan Vassar, told an Aug. 1 session of the Texas Environmental Superconference here that if attorneys have a SEP to propose as part of a federal settlement, "it will take some real convincing because apparently the ongoing discussions -- and this is more at DOJ than it is at EPA -- are that, 'We're not going to allow SEPs as part of the enforcement protocol.'"

Vassar said this marks a change from past practice, when Trump officials told attorneys representing municipalities that their broader efforts to limit the use of SEPs would not generally apply in settlements involving local government entities. "We were told on several occasions, 'On municipal enforcement, if you like your SEP, you can keep your SEP'," he said.

However, that is no longer the case, Vassar said. "We learned just this week, it may be news to some . . . A SEP as a part of an enforcement mechanism is not going to be pursued as a part of this administration."

A DOJ spokesman denies there has been a policy change, saying all department guidance is being followed and declining to comment on whether new guidance has been issued.

DOJ's "Environment and Natural Resources Division [(ENRD)] is following all current [DOJ] memoranda, including those issued by the Division itself and by the Attorney General," the spokesman says.

The spokesman declined to clarify whether that means SEPs can be approved or if there is a new document prohibiting them.

An EPA spokesman says the agency has not changed its 2015 policy regarding use of SEPs in settlement agreements. But the spokesman noted that former Attorney General Jeff Sessions, in a 2018 policy, had required that "judicial settlements with a state or local entity that include SEPs must first be reviewed and approved by the Associate Attorney General."

The new prohibition on SEPs renews focus on the issue, which has raised concerns in the past. The concern stemmed initially from Sessions' [June 2017 memo](#) banning settlements that included payments to third parties. Sessions opposed such payments because the parties were "neither victims nor parties to the lawsuits."

Some GOP lawmakers also complained that such settlements amount to "sweetheart deals" for environmental groups that benefitted from SEPs.

But many attorneys warned at the time that the prohibition [would drastically impair their ability to settle](#) EPA-related cases, and they strongly defended SEPs as providing a major incentive for environmental settlements with local both governments and private industry.

For example, some municipal officials [were concerned](#) that any limitation on the use of SEPs would hamper their efforts to expand the use of SEPs to offset stipulated penalties.

EPA Policy

After the uproar, DOJ's then-acting ENRD chief Jeff Woods in [a January 2018 memo](#) clarified exceptions to the payment ban, including [for projects that comply](#) with EPA's 2015 SEP policy.

Then, Sessions in [a November 2018 policy](#) wrote that settlements with municipal entities that included SEPs had to win approval from the associate attorney general for ENRD.

While the policy barring payments to third parties has been implemented, it faces some legal uncertainty as a federal court in Washington, D.C., has [so far declined](#) a DOJ request to drop a SEP from an already approved settlement with Harley Davidson -- more than two years after the request was first made.

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"What we are starting to see happen is where we proposed SEPs we thought would be OK, and that everyone indicated were OK, but of course did not have final approval, are now getting rejected," the first industry source says.

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These discussions are "just happening now . . . we are engaged in thinking about that right now." The answer will be based on how badly the setting party wants to do the SEP "or whether it can get the case done, pay more money and move on," the source adds. "We have to think about each case and whether it is worth having that fight."

This source has "not had any direct discussions with someone at DOJ or EPA other than being told they are not accepting that SEP."

The attorney notes that including SEPs in local government settlements has "been very valuable" and "helped us get to agreements in situations where municipalities feel very strongly that if they pay money it should go toward the community, and hopefully go to improving water quality for the community, and not get sent to D.C. to go to some federal agency."

City councils are more apt to approve settlements if they include incentives such as SEPs that require tree planting or repairing a sewer line, the source explains. However, it is also unclear, the source notes, whether dropping a SEP at this stage will tank the overarching settlement and result in litigation.

The industry source says when the policies first came out, it appeared they would not restrict SEPs by municipalities unless the governments were paying contractors to do the work, rather than having their own employees do so.

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The last case this source was involved with that had a SEP -- which required a city to improve a stream -- was approved by a court in early 2018. -- *Dawn Reeves* (dreeves@iwpnews.com) & *Lee Logan* (llogan@iwpnews.com)

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220946

Patrick J. Egan, M.P.A.
Deputy Director of Communications
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW (MC: 2201A)
Washington, DC 20460
Office: 202-564-4059 | Cell: **Ex. 6**

From: Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Sent: Friday, August 9, 2019 9:03 AM
To: Egan, Patrick <egan.patrick@epa.gov>
Subject: Re: DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy

This requires a log in. Can you send the full article?

Sent from my iPhone

On Aug 9, 2019, at 8:58 AM, Egan, Patrick <egan.patrick@epa.gov> wrote:

Here you go.

<https://insideepa.com/weekly-focus/doj-begins-rejecting-seps-municipal-settlements-undercutting-policy>

Patrick J. Egan, M.P.A.
Deputy Director of Communications
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

1200 Pennsylvania Avenue NW (MC: 2201A)
Washington, DC 20460
Office: 202-564-4059 | Cell: **Ex. 6**

From: Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Sent: Friday, August 9, 2019 8:54 AM
To: Hull, George <Hull.George@epa.gov>; Egan, Patrick <egan.patrick@epa.gov>
Subject: Fwd: DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy

Can you send me the full article?

Sent from my iPhone

Begin forwarded message:

From: "Traylor, Patrick" <traylor.patrick@epa.gov>
Date: August 8, 2019 at 7:02:22 PM EDT
To: "Bodine, Susan" <bodine.susan@epa.gov>, "Starfield, Lawrence" <Starfield.Lawrence@epa.gov>
Cc: "Hull, George" <Hull.George@epa.gov>
Subject: Fwd: DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)
Ex. 6 (cell)

Begin forwarded message:

From: "InsideEPA.com" <insideepa-alerts@iwpnews.com>
Date: August 8, 2019 at 6:18:10 PM EDT
To: traylor.patrick@epa.gov
Subject: DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy
Reply-To: insideepa-alerts@iwpnews.com

InsideEPA

August 8, 2019

THE WEEKLY FOCUS

An in-depth look from our editors at a specific issue facing the Agency, published weekly.

DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting EPA Policy

AUSTIN, TX -- The Department of Justice (DOJ) is rejecting supplemental environmental projects (SEPs) in settlements it is negotiating with local governmental agencies, a move that could undercut department policy that says it will approve the projects as part of deals to settle violations. DOJ attorneys say the move is necessary to ensure settlements comply with EPA's SEP policy, attorneys say.

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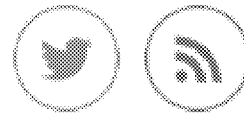
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Mailing address: 1919 South Eads Street, Suite 100, Arlington VA 22202

Telephone: 703-416-8500 or 1-800-424-9068

<DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy Inside.pdf>

Message

From: Porter, Amy [Porter.Amy@epa.gov]
Sent: 8/9/2019 12:05:53 PM
To: Makepeace, Caroline [Makepeace.Caroline@epa.gov]; Smith-Watts, David [Smith-Watts.David@epa.gov]
Subject: RE: InsideEPA Article on SEPs

Thanks for sending, David! We kind of expected this.

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Friday, August 09, 2019 7:57 AM
To: Smith-Watts, David <Smith-Watts.David@epa.gov>
Cc: Porter, Amy <Porter.Amy@epa.gov>
Subject: Re: InsideEPA Article on SEPs

Yep, the usual inside epa article. As much wrong as right. Thx for sending as it did come out late in the day!

Sent from my iPhone

On Aug 9, 2019, at 7:17 AM, Smith-Watts, David <Smith-Watts.David@epa.gov> wrote:

In case you didn't see this yesterday...

DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy

August 08, 2019

AUSTIN, TX -- The Department of Justice (DOJ) is rejecting supplemental environmental projects (SEPs) in settlements it is negotiating with local governmental agencies, a move that appears to undercut department policy that says it will approve the projects as part of deals provided they comply with EPA's SEP policy, attorneys say.

The rejections have begun being communicated over the past month, according to one industry attorney familiar with negotiations in several clean water settlements between DOJ and local governments, coming after years of negotiations where DOJ officials indicated the projects were likely to be approved.

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However, that is no longer the case, Vassar said. "We learned just this week, it may be news to some . . . A SEP as a part of an enforcement mechanism is not going to be pursued as a part of this administration."

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Then, Sessions in a November 2018 policy wrote that settlements with municipal entities that included SEPs had to win approval from the associate attorney general for ENRD.

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The last case this source was involved with that had a SEP -- which required a city to improve a stream -- was approved by a court in early 2018. -- Dawn Reeves (dreeves@iwpnews.com) & Lee Logan (llogan@iwpnews.com)

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David Smith-Watts
Attorney-Advisor
U.S. EPA/OECA/OCE/IO/XPS
1200 Pennsylvania Ave., NW (MC 2241A)
Washington, DC 20460
Phone: (202) 564-4083
Email: smith-watts.david@epa.gov

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Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 8/8/2019 4:33:12 PM
To: Porter, Amy [Porter.Amy@epa.gov]
Subject: Re: InsideEPA Response

Yep, saw that

Sent from my iPhone

On Aug 8, 2019, at 12:28 PM, Porter, Amy <Porter.Amy@epa.gov> wrote:

Pls flag the typo – according should be accordingly.

Thanks!

From: Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Sent: Thursday, August 08, 2019 12:05 PM
To: Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>
Subject: FW: InsideEPA Response
Importance: High

Any quick thoughts on this response to reporters asking about changes to the SEP policy?

Larry

This message is CONFIDENTIAL, and may contain legally privileged information. If you are not the intended recipient, or believe you received this communication in error, please delete it immediately, do not copy, and notify the sender. Thank you.

From: Bodine, Susan <bodine.susan@epa.gov>
Sent: Thursday, August 08, 2019 11:56 AM
To: Egan, Patrick <egan.patrick@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>
Cc: Hull, George <Hull.George@epa.gov>
Subject: RE: InsideEPA Response

My redraft. Any comments? Also needs coordination with DOJ.

Ex. 5 AC/DP

Ex. 5 AC/DP

From: Egan, Patrick <egan.patrick@epa.gov>

Sent: Thursday, August 8, 2019 11:01 AM

To: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>;
Traylor, Patrick <traylor.patrick@epa.gov>

Cc: Hull, George <Hull.George@epa.gov>

Subject: InsideEPA Response

Susan, Larry and Patrick,

Here is a proposed response to InsideEPA's inquiry. Let me know if you have any comments.

Thanks,

Pat

Ex. 5 AC/DP

Patrick J. Egan, M.P.A.

Deputy Director of Communications

Office of Enforcement and Compliance Assurance

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue NW (MC: 2201A)

Washington, DC 20460

Office: 202-564-4059 | Cell: Ex. 6

Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 6/17/2019 3:49:48 PM
To: Dworkin, Karen (ENRD) [Karen.Dworkin@usdoj.gov]; Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]
CC: Porter, Amy [Porter.Amy@epa.gov]
Subject: RE: For review Write-ups on Muni Cases with SEPs
Attachments: **Ex. 5 Attorney Client (AC)**

Slightly updated version attached

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Dworkin, Karen (ENRD) <Karen.Dworkin@usdoj.gov>
Sent: Sunday, June 16, 2019 5:59 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>
Cc: Porter, Amy <Porter.Amy@epa.gov>
Subject: RE: For review Write-ups on Muni Cases with SEPs

Thanks Caroline.

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Sunday, June 16, 2019 5:52 PM
To: Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>
Cc: Porter, Amy <Porter.Amy@epa.gov>
Subject: For review Write-ups on Muni Cases with SEPs

Attached is a shot at pulling together the email traffic and snippets -- for your review, comments and any additions. I'm sharing with WED as well.

Ex. 5 AC/AWP/DP

Thanks, and hope you had nice weekends!

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Makepeace, Caroline
Sent: Friday, June 14, 2019 5:08 PM
To: karen.dworkin@usdoj.gov
Cc: Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>
Subject: Re: Rockville Center

Thank you Karen! I will try to carve out some time this weekend to patch together what we've got, and share with you for QA/QC, so our facts will be as straight as possible for Monday's call

Sent from my iPhone

On Jun 14, 2019, at 2:36 PM, Dworkin, Karen (ENRD) <Karen.Dworkin@usdoj.gov> wrote:

We wont know on this one til Monday.

From: Gallagher, Mark (ENRD) <MGallagher@ENRD.USDOJ.GOV>
Sent: Friday, June 14, 2019 2:10 PM
To: Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV>
Subject: Fwd: Rockville Center

More to follow on Monday ...

-Mark

Begin forwarded message:

From: "Silverman, Matthew (USANYE)" <Matthew.Silverman@usdoj.gov>
Date: June 14, 2019 at 1:21:04 PM EDT
To: "Gallagher, Mark (ENRD)" <Mark.Gallagher@usdoj.gov>
Subject: Re: Rockville Center

Ex. 5 AC/AWP/DP

Truly,
Matthew Silverman
Assistant U.S. Attorney, EDNY

On Jun 14, 2019, at 1:12 PM, Gallagher, Mark (ENRD)
<MGallagher@enrd.usdoj.gov<<mailto:MGallagher@enrd.usdoj.gov>>> wrote:

Hi Matt

I haven't heard from James. Do you happen to know the answer to Karen's question?

Kate is usually in a hurry when she asks me a question so I don't like to wait too long to answer her.

If James is out and you don't know the answer let me know that also so I can tell Karen we'll have an answer for her on Monday.

-Mark

Begin forwarded message:

From: "Gallagher, Mark (ENRD)"
<MGallagher@ENRD.USDOJ.GOV<<mailto:MGallagher@ENRD.USDOJ.GOV>>>
Date: June 14, 2019 at 7:53:21 AM EDT
To: "Cho, James (USANYE)" <JCho@usa.doj.gov<<mailto:JCho@usa.doj.gov>>>, "Dworkin, Karen (ENRD)"
<KDworkin@ENRD.USDOJ.GOV<<mailto:KDworkin@ENRD.USDOJ.GOV>>>, "Silverman, Matthew (USANYE)" <MSilverman@usa.doj.gov<<mailto:MSilverman@usa.doj.gov>>>
Subject: Fwd: Rockville Center

Hi James

Can you answer this question for Karen ?

-mark

Begin forwarded message:

From: "Dworkin, Karen (ENRD)"
<KDworkin@ENRD.USDOJ.GOV<<mailto:KDworkin@ENRD.USDOJ.GOV>>>
Date: June 14, 2019 at 7:18:43 AM EDT
To: "Gallagher, Mark (ENRD)"
<MGallagher@ENRD.USDOJ.GOV<<mailto:MGallagher@ENRD.USDOJ.GOV>>>
Subject: Rockville Center

Ex. 5 AC/AWP/DP

From: Gallagher, Mark (ENRD)
<MGallagher@ENRD.USDOJ.GOV<<mailto:MGallagher@ENRD.USDOJ.GOV>>>
Sent: Thursday, May 23, 2019 11:47 AM
To: Dworkin, Karen (ENRD)
<KDworkin@ENRD.USDOJ.GOV<<mailto:KDworkin@ENRD.USDOJ.GOV>>>; Beckmann, Diane (USANYE) <DBeckmann@usa.doj.gov<<mailto:DBeckmann@usa.doj.gov>>>; Silverman, Matthew (USANYE) <MSilverman@usa.doj.gov<<mailto:MSilverman@usa.doj.gov>>>
Cc: Makepeace, Caroline
<Makepeace.Caroline@epa.gov<<mailto:Makepeace.Caroline@epa.gov>>>
Subject: Re: Bookhaven and Northport

Diane and Matt

I know I just emailed you about this but on further reflection, it probably makes sense for you to communicate directly with Karen Dworkin (my boss) and Caroline makepeace .
Please just cc me on whatever you send them. I probably don't need to participate in any phone calls you have with Caroline.

(I'm on a short vacation, and not always easily available)

-Mark

On May 23, 2019, at 10:40 AM, Dworkin, Karen (ENRD)

<KDworkin@enrd.usdoj.gov<<mailto:KDworkin@enrd.usdoj.gov>>> wrote:

Ex. 5 AC/AWP/DP

Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 6/14/2019 1:39:30 PM
To: Silverman, Matthew (USANYE) [Matthew.Silverman@usdoj.gov]
CC: karen.dworkin@usdoj.gov; Gallagher, Mark (ENRD) [Mark.Gallagher@usdoj.gov]; Beckmann, Diane (USANYE) [Diane.Beckmann@usdoj.gov]
Subject: Re: **Ex. 7(A)** SEP info

Thanks, Matt!

Sent from my iPhone

On Jun 14, 2019, at 9:33 AM, Silverman, Matthew (USANYE) <Matthew.Silverman@usdoj.gov> wrote:

Hi Karen,

Ex. 5 AC/AWP/DP Ex. 7(A)

Thanks!
Matt

From: Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV>
Sent: Friday, June 14, 2019 7:13 AM
To: Silverman, Matthew (USANYE) <MSilverman@usa.doj.gov>; Gallagher, Mark (ENRD) <MGallagher@ENRD.USDOJ.GOV>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Cc: Beckmann, Diane (USANYE) <DBeckmann@usa.doj.gov>
Subject: RE: **Ex. 7(A)**

Ex. 5 AC/AWP/DP Ex. 7(A)

From: Silverman, Matthew (USANYE) <Matthew.Silverman@usdoj.gov>
Sent: Friday, May 24, 2019 3:05 PM
To: Gallagher, Mark (ENRD) <MGallagher@ENRD.USDOJ.GOV>; Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Cc: Beckmann, Diane (USANYE) <DBeckmann@usa.doj.gov>
Subject: RE: **Ex. 7(A)**

Dear Karen, Caroline, Mark,

Ex. 5 AC/AWP/DP Ex. 7(A)

Ex. 5 AC/AWP/DP Ex. 7(A)

Please let us know if you need further information, and if so, we will consult with Region 2 on Tuesday.

Truly,
Matt

Matthew Silverman
Assistant United States Attorney
Chief of Environmental Litigation, Civil Division
Eastern District of New York
271 Cadman Plaza East, 7th Floor
Brooklyn, New York 11201
Tel: 718-254-6409
Fax: 718-254-6081
matthew.silverman@usdoj.gov

From: Gallagher, Mark (ENRD) <MGallagher@ENRD.USDOJ.GOV>
Sent: Thursday, May 23, 2019 11:47 AM
To: Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV>; Beckmann, Diane (USANYE) <DBeckmann@usa.doj.gov>; Silverman, Matthew (USANYE) <MSilverman@usa.doj.gov>
Cc: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: Re: **Ex. 7(A)**

Diane and Matt

I know I just emailed you about this but on further reflection, it probably makes sense for you to communicate directly with Karen Dworkin (my boss) and Caroline makepeace .
Please just cc me on whatever you send them. I probably don't need to participate in any phone calls you have with Caroline.

(I'm on a short vacation, and not always easily available)

-Mark

On May 23, 2019, at 10:40 AM, Dworkin, Karen (ENRD) <KDworkin@enrd.usdoj.gov> wrote:

Ex. 5 AC/AWP/DP Ex. 7(A)

Ex. 5 AC/AWP/DP Ex. 7(A)

If Caroline has more questions beyond any response you send us, are you available to talk with her. (Caroline, Mark can be reached at 202 514 5405).

Thanks Mark.

Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 6/13/2019 9:32:18 PM
To: karen.dworkin@usdoj.gov
Subject: SEPs

Ex. 5 AC/AWP/DP

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 6/5/2019 6:02:41 PM
To: Porter, Amy [Porter.Amy@epa.gov]
Subject: RE: Revised SEP Note to Claire Murray

Haa! I was just now looking for you!

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Porter, Amy
Sent: Wednesday, June 05, 2019 1:59 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: FW: Revised SEP Note to Claire Murray

I stopped by to see you but you were on a call. I'll try again in a few minutes.

From: Porter, Amy
Sent: Wednesday, June 05, 2019 12:50 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>
Subject: RE: Revised SEP Note to Claire Murray

Rosemarie—

Ex. 5 AC/DP

Thanks
Amy

From: Makepeace, Caroline
Sent: Wednesday, June 05, 2019 10:26 AM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>
Subject: Revised SEP Note to Claire Murray

Revised per Larry's comments. I cleaned up some typos and made one substantive change to the sentence in red below

Ex. 5 AC/DP

Claire—

Ex. 5 AC/DP

Ex. 5 AC/DP

Please let me know if I can provide any further information.

Susan

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 6/6/2019 8:31:09 PM
To: Porter, Amy [Porter.Amy@epa.gov]
Subject: RE: IMPORTANT: Draft Thank-You Email from Bodine to Murray re meeting on Muni SEPs

Don't worry about it, really. We are all really going too fast, and it's easy to do the thing you might not do if you'd only not been on a flat out run. On the other hand, just today I said something really awful to someone, that undoubtedly caused them pain, with no such reason, just my own bone-headedness and forgetfulness that my joke squarely implicated their own personal tragedy.

All one can do is say sorry. And here, you've already done that!

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Porter, Amy
Sent: Thursday, June 06, 2019 4:25 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: Re: IMPORTANT: Draft Thank-You Email from Bodine to Murray re meeting on Muni SEPs

It is definitely a lesson learned. I guess I didn't think you needed to be on it because of course you already knew that you were making the edits. But clearly that is not the right approach here for so many reasons. Sigh.

Sent from my iPhone

On Jun 6, 2019, at 3:16 PM, Makepeace, Caroline <Makepeace.Caroline@epa.gov> wrote:

Don't worry about it! It's ok, and I'm so glad to know it's not as awkward as we thought

Sent from my iPhone

On Jun 6, 2019, at 2:22 PM, Porter, Amy <Porter.Amy@epa.gov> wrote:

I can't tell you how awful I feel about this.

Sent from my iPhone

On Jun 6, 2019, at 2:12 PM, Makepeace, Caroline <Makepeace.Caroline@epa.gov> wrote:

Oh, wow. I guess that is a reminder to selves to always check. And, ugh, can't believe I'm saying this, LOL, not "overreact." Or lose sleep over stuff! Well, glad to know it's not as we feared. Or I did...

Sent from my iPhone

On Jun 6, 2019, at 2:04 PM, Porter, Amy <Porter.Amy@epa.gov> wrote:

I owe you the BIGGEST APOLOGY EVER Caroline. I am the one who left you off and then Rosemarie just replied all. OMG OMG OMG. I am soooooooooooooooooooooo sorry. I want to crawl in a hole.

From: Porter, Amy
Sent: Wednesday, June 05, 2019 9:53 AM
To: Rosemarie Kelley (Kelley.Rosemarie@epa.gov) <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Johnpc Fogarty <Fogarty.Johnpc@epa.gov>
Subject: FW: Draft Thank-You Email from Bodine to Murray re meeting on Muni SEPs
Importance: High

Caroline is accepting Larry's comments and will send a clean version to Rosemarie to send up.

From: Starfield, Lawrence
Sent: Wednesday, June 05, 2019 9:09 AM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Cc: Koslow, Karin <Koslow.Karin@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>
Subject: RE: Draft Thank-You Email from Bodine to Murray re meeting on Muni SEPs
Importance: High

This looks good. I had a few suggestions, below. Please consider them, and then send a revised version to both Susan and me so that we can issue this today. Thanks.

Larry

This message is CONFIDENTIAL, and may contain legally privileged information. If you are not the intended recipient, or believe you received this communication in error, please delete it immediately, do not copy, and notify the sender. Thank you.

From: Kelley, Rosemarie
Sent: Tuesday, June 04, 2019 7:03 PM
To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>

Cc: Koslow, Karin <Koslow.Karin@epa.gov>; Porter, Amy
<Porter.Amy@epa.gov>; Makepeace, Caroline
<Makepeace.Caroline@epa.gov>; Fogarty, Johnpc
<Fogarty.Johnpc@epa.gov>; Buterbaugh, Kristin
<Buterbaugh.Kristin@epa.gov>; Shiffman, Cari
<Shiffman.Cari@epa.gov>

Subject: Draft Thank-You Email from Bodine to Murray
re meeting on Muni SEPs

Larry—Here is our proposed note from Susan to Claire.
We look forward to your feedback.

Claire—

Ex. 5 AC/DP

Ex. 5 AC/DP

Please let me know if I can provide any further information.

Susan

Regards,
Rosemarie A. Kelley, Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
202-564-4014

Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 6/3/2019 8:47:42 PM
To: Porter, Amy [Porter.Amy@epa.gov]; Rosemarie Kelley [Kelley.Rosemarie@epa.gov]; Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]; Karin Koslow [Koslow.Karin@epa.gov]
Subject: RE: update on SEPs and DOJ
Attachments: Draft thank you email Bodine to Murray.docx

Per Amy's update below -- a cut at the latest approach (pasted below and attached)

Draft Thank-You Email re meeting on SEPs
6/3/19 Draft

Ex. 5 AC/DP

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement

US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Porter, Amy
Sent: Monday, June 03, 2019 4:06 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: update

Ex. 5 AC/DP

Amy Porter, Director
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-2431

Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 5/28/2019 7:32:22 PM
To: Bailey-Morton, Ethel [Bailey-Morton.Ethel@epa.gov]
Subject: RE: Materials for Claire Murray SEP meeting -- REVISED Talking Points

No problem! Thanks for your help!

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Bailey-Morton, Ethel
Sent: Tuesday, May 28, 2019 3:30 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Cc: Shiffman, Cari <Shiffman.Cari@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>
Subject: RE: Materials for Claire Murray SEP meeting -- REVISED Talking Points

Thank you

From: Makepeace, Caroline
Sent: Tuesday, May 28, 2019 3:29 PM
To: Bailey-Morton, Ethel <Bailey-Morton.Ethel@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Cc: Shiffman, Cari <Shiffman.Cari@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>
Subject: RE: Materials for Claire Murray SEP meeting -- REVISED Talking Points

The revised talking points, attached

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Bailey-Morton, Ethel
Sent: Tuesday, May 28, 2019 3:06 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence

<Starfield.Lawrence@epa.gov>

Cc: Shiffman, Cari <Shiffman.Cari@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>
Subject: RE: Materials for Claire Murray SEP meeting

Caroline,

Please provide copies to the IO office for this meeting tomorrow.

Thanks,
Ethel

From: Makepeace, Caroline

Sent: Tuesday, May 28, 2019 3:04 PM

To: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>

Cc: Shiffman, Cari <Shiffman.Cari@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Bailey-Morton, Ethel <Bailey-Morton.Ethel@epa.gov>

Subject: RE: Materials for Claire Murray SEP meeting

Just got some feedback from Larry on the talkers, so will be tweaking that piece and re-sending.

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Makepeace, Caroline

Sent: Tuesday, May 28, 2019 2:57 PM

To: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>

Cc: Shiffman, Cari <Shiffman.Cari@epa.gov>; Rosemarie Kelley <Kelley.Rosemarie@epa.gov>; Karin Koslow <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Amy Porter <Porter.Amy@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Bailey-Morton, Ethel <Bailey-Morton.Ethel@epa.gov>

Subject: Materials for Claire Murray SEP meeting

Attached are talking points and background materials for tomorrow's meeting with Claire Murray, on SEPs in state and local government cases.

- 1) Talking Points for the Wednesday discussion with Claire Murray
- 2) Examples of Typical Muni SEPs
- 3) Synopsis of current state of affairs on SEPs, with DOJ/AAG
- 4) SEP Fact Sheet
- 5) 1977 MOU with DOJ

Ex. 5 AC/DP

Just let us know if you have any questions.

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Makepeace, Caroline
Sent: Tuesday, May 28, 2019 12:10 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Cc: Shiffman, Cari <Shiffman.Cari@epa.gov>; Rosemarie Kelley <Kelley.Rosemarie@epa.gov>; Karin Koslow <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Amy Porter <Porter.Amy@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>
Subject: Advance copy of Revised Talking points for Claire Murray SEP meeting

Susan –

Ex. 5 AC/DP

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 5/28/2019 3:24:54 PM
To: karen.dworkin@usdoj.gov
Subject: FW: Northport
Attachments: Northport - Consent Judgment (DRAFT reflecting 3-14 call with MG).DOCX; 3L82821-Appendix B SEP EPA_R2 Comments Edits 11 01 2018.DOCX

Hi Karen --

Ex. 5 AC/AWP/DP

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Zwany, Deborah (USANYE) <Deborah.Zwany@usdoj.gov>
Sent: Friday, May 24, 2019 8:58 AM
To: karen.dworkin@usdoj.gov; Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Cc: Gallagher, Mark (ENRD) <Mark.Gallagher@usdoj.gov>; Silverman, Matthew (USANYE) <Matthew.Silverman@usdoj.gov>; John.Vagelatos@usdoj.gov; Feinmark, Phyllis <Feinmark.Phyllis@epa.gov>; Murphy, Kara <Murphy.Kara@epa.gov>
Subject: Northport

Hello all,

I will be taking this case over from John Vagelatos. John is transferring to our Criminal Division in a couple of weeks.

Ex. 5 (AC)

Ex. 5 (AC)

Ex. 5 (AC) Have a nice Memorial Day weekend.

Deborah

Deborah B. Zwany
Senior Litigation Counsel
United States Attorney's Office
Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201
(718) 254-6010

On May 23, 2019, at 11:53 AM, Silverman, Matthew (USANYE) <MSilverman@usa.doj.gov> wrote:

Please see below for more context.

Truly,
Matthew Silverman
Assistant U.S. Attorney, EDNY

Begin forwarded message:

From: "Gallagher, Mark (ENRD)" <MGallagher@ENRD.USDOJ.GOV>
Date: May 23, 2019 at 11:46:39 AM EDT
To: "Dworkin, Karen (ENRD)" <KDworkin@ENRD.USDOJ.GOV>, "Beckmann, Diane (USANYE)" <DBeckmann@usa.doj.gov>, "Silverman, Matthew (USANYE)" <MSilverman@usa.doj.gov>
Cc: "Makepeace, Caroline" <Makepeace.Caroline@epa.gov>
Subject: Re: Bookhaven and Northport

Diane and Matt

I know I just emailed you about this but on further reflection, it probably makes sense for you to communicate directly with Karen Dworkin (my boss) and Caroline makepeace .

Please just cc me on whatever you send them. I probably don't need to participate in any phone calls you have with Caroline.

(I'm on a short vacation, and not always easily available)

-Mark

On May 23, 2019, at 10:40 AM, Dworkin, Karen (ENRD) <KDworkin@enrd.usdoj.gov> wrote:

Ex. 5 AC/AWP/DP

Thanks Mark.

Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 8/7/2019 3:43:25 PM
To: Porter, Amy [Porter.Amy@epa.gov]
Subject: Re: TO DO ITEM: Administrator Hearing in September. MONDAY 8/5 deadline re topics for issue papers, WED 8/14 deadline for updated/new papers

Sounds like a plan

Sent from my iPhone

On Aug 7, 2019, at 11:40 AM, Porter, Amy <Porter.Amy@epa.gov> wrote:

I'm not sure. I'd like to wait for next week when RK is back.

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Wednesday, August 07, 2019 10:45 AM
To: Porter, Amy <Porter.Amy@epa.gov>
Subject: Re: TO DO ITEM: Administrator Hearing in September. MONDAY 8/5 deadline re topics for issue papers, WED 8/14 deadline for updated/new papers

Ok. When is that happening?

Sent from my iPhone

On Aug 7, 2019, at 10:33 AM, Porter, Amy <Porter.Amy@epa.gov> wrote:

Well I thought about this and decided to stay silent but then Karin emailed me and said we need to discuss. 😊

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Wednesday, August 07, 2019 10:32 AM
To: Porter, Amy <Porter.Amy@epa.gov>
Subject: Re: TO DO ITEM: Administrator Hearing in September. MONDAY 8/5 deadline re topics for issue papers, WED 8/14 deadline for updated/new papers

Ex. 5 AC/AWP/DP

Sent from my iPhone

On Aug 7, 2019, at 8:17 AM, Porter, Amy <Porter.Amy@epa.gov> wrote:

Ex. 5 AC/AWP/DP

you please start thinking about how we might message it. And BTW the deadlines are fast approaching. Please see below.

Thank you!
Amy

From: Holmes, Carol <Holmes.Carol@epa.gov>
Sent: Thursday, August 01, 2019 5:25 PM
To: OECA-OCE-MANAGERS <OECAOCEMANAGERS@epa.gov>
Subject: TO DO ITEM: Administrator Hearing in September. MONDAY 8/5 deadline re topics for issue papers, WED 8/14 deadline for updated/new papers
Importance: High

Hi Everyone – sorry for the Thursday afternoon in August with short Monday August 5th deadline, but you know how OCIR is. . . .sigh. The good news is that we have almost 2 weeks to do any substantive drafting.

Per Caroline’s email below, the Administrator is testifying in September, so they want to update the batch of briefing papers that are used when he testifies. We have two critical asks: (1) are there any existing issue papers that can be struck, or any we need to add (Monday, August 5th deadline), and (2) update existing papers that are stale and draft new ones (Wednesday August 14th deadline).

The existing OECA issue papers are (I’ve added some parentheticals):

1. Criminal Enforcement – New Cases
2. Criminal Enforcement – Number of Agents
3. Drinking Water Enforcement (*need to update, if we keep?*)
4. Enforcement Activity Annual Results
5. FY20 OECA Enforcement and Compliance Programs
6. Information Requests (*is this still a “hot” topic or can we strike this paper?*)
7. Inspection Numbers
8. Lead Enforcement Activity
9. Notice of Judicial Referrals (*is this still a “hot” topic or can we strike this paper?*)
10. PFAS Enforcement Activity (need to update)
11. Transition National Enforcement Initiatives to National Compliance Initiatives (*OC should update this to reflect final NCIs, with our input*)

12. Using Superfund Enforcement Tools to Promote Cleanup and Redevelopment
13. Key OECA Program Changes (needs a lot of updating based on other issue papers)

OCE DEADLINES:

Monday August 5th COB – please let me, Amy and Karin know if you want to draft a new issue paper, or strike an existing one.

Wednesday August 14th COB – final papers, approved through Rosemarie or Karin, to me. Please use your Generals that week to get final approval by Rosemarie/Karin.

Attached are:

1. OECA Final.zip.. Zip file containing all the latest versions of the OECA issue papers last updated this Spring. In other words, the starting point for revisions/updates.
2. Program Office Fact Sheet Format. The latest fact sheet format.
3. 01-01-2019-TOC Program Fact Sheets.... A list of all the issue papers provided by all the program offices. *Let me know if you are interested in reviewing any issue papers of another program office and I'll let OAP know they should request a copy of the latest version (which may be changing of course). I already have all of OLEM's if anyone wants those.*

Thanks, Carol

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Carol S. Holmes
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement (MC 2241A)
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460
Phone (202) 564-8709

From: Emmerson, Caroline <Emmerson.Caroline@epa.gov>
Sent: Thursday, August 1, 2019 4:54 PM
To: Holmes, Carol <Holmes.Carol@epa.gov>; Kadish, Rochele
<Kadish.Rochele@epa.gov>; Cavanaugh, Charles
<Cavanaugh.Charles@epa.gov>; Fisher, Mike <Fisher.Mike@epa.gov>;
DeLeon, Rafael <DeLeon.Rafael@epa.gov>; Mackey, Cyndy
<Mackey.Cyndy@epa.gov>; Leff, Karin <Leff.Karin@epa.gov>; Muller,
Marie <MULLER.MARIE@EPA.GOV>
Cc: Gardner, Monica <Gardner.Monica@epa.gov>; Patterson, Kenneth
<Patterson.Kenneth@epa.gov>; Rae, Sarah <Rae.Sarah@epa.gov>;
Spina, Providence <Spina.Providence@epa.gov>; Vizard, Elizabeth
<Vizard.Elizabeth@epa.gov>; Swack, David <Swack.David@epa.gov>;
Warren, JohnM <Warren.JohnM@epa.gov>; Dalzell, Sally
<Dalzell.Sally@epa.gov>; Azad, Ava <Azad.Ava@epa.gov>; Folkemer,
Nathaniel <Folkemer.Nathaniel@epa.gov>; Ingram, Amir
<Ingram.Amir@epa.gov>
Subject: Administrator Hearing: issue papers- Due August 15th
Importance: High

All,

The Administrator will be testifying before the House Science, Space and Technology Committee in September. OCIR expects that this will be a general oversight hearing to cover a variety of potential topics.

OCIR is asking for any updates/deletions/additions to the attached materials from the spring budget hearings:

- Issue paper table of contents (TOC) (list of OECA issues papers below);
- OECA Issue papers:
 - Criminal Enforcement – New Cases
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 - Transition National Enforcement Initiatives to National Compliance Initiatives
 - Using Superfund Enforcement Tools to Promote Cleanup and Redevelopment
 - Key OECA Program Changes

Also attached are:

- OLEM issue papers (for your awareness, **note: we are not taking comment on these**)

- Template for new issue papers

Due Dates:

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Please note the following:

Site fact sheets: OCIR will be requesting site issue papers for committee members from the regions and they may ask us for additional info too. We will keep you posted.

Other AAship papers: please let me know if you would like to see any particular issue papers from other AAships, understanding that they might be making changes/additions/deletions.

We greatly appreciate your help in getting these papers in final form for clearance by our AA.

Thanks and please let me know any questions.

Caroline

*Caroline Emmerson, Director, Policy and Legislative Coordination
Division/OAP/OECA
U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue,
N.W., Washington, DC 20460/ 202-564-1716 (office),
emmerson.caroline@epa.gov*

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<OECA FINAL.zip>

<04-01-2019 - TOC Program Fact Sheets - Budget Hearings_ (002).docx>

<Program Office Fact Sheet Format.docx>

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 8/7/2019 3:00:42 PM
To: Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]
Subject: Fwd: TO DO ITEM: Administrator Hearing in September. MONDAY 8/5 deadline re topics for issue papers, WED 8/14 deadline for updated/new papers
Attachments: OECA FINAL.zip; ATT00001.htm; 04-01-2019 - TOC Program Fact Sheets - Budget Hearings_ (002).docx; ATT00002.htm; Program Office Fact Sheet Format.docx; ATT00003.htm

Ex. 5 Deliberative Process (DP)

Sent from my iPhone

Begin forwarded message:

From: "Porter, Amy" <Porter.Amy@epa.gov>
Date: August 7, 2019 at 8:17:15 AM EDT
To: "Makepeace, Caroline" <Makepeace.Caroline@epa.gov>
Subject: FW: TO DO ITEM: Administrator Hearing in September. MONDAY 8/5 deadline re topics for issue papers, WED 8/14 deadline for updated/new papers

Ex. 5 Deliberative Process (DP)

Thank you!
Amy

From: Holmes, Carol <Holmes.Carol@epa.gov>
Sent: Thursday, August 01, 2019 5:25 PM
To: OECA-OCE-MANAGERS <OECAOCEMANAGERS@epa.gov>
Subject: TO DO ITEM: Administrator Hearing in September. MONDAY 8/5 deadline re topics for issue papers, WED 8/14 deadline for updated/new papers
Importance: High

Hi Everyone – sorry for the Thursday afternoon in August with short Monday August 5th deadline, but you know how OCIR is. ...sigh. The good news is that we have almost 2 weeks to do any substantive drafting.

Per Caroline's email below, the Administrator is testifying in September, so they want to update the batch of briefing papers that are used when he testifies. We have two critical asks: (1) are there any existing issue papers that can be struck, or any we need to add (Monday, August 5th deadline), and (2) update existing papers that are stale and draft new ones (Wednesday August 14th deadline).

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Thanks, Carol

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Carol S. Holmes
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement (MC 2241A)
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW

From: Emmerson, Caroline <Emmerson.Caroline@epa.gov>

Sent: Thursday, August 1, 2019 4:54 PM

To: Holmes, Carol <Holmes.Carol@epa.gov>; Kadish, Rochele <Kadish.Rochele@epa.gov>; Cavanaugh, Charles <Cavanaugh.Charles@epa.gov>; Fisher, Mike <Fisher.Mike@epa.gov>; DeLeon, Rafael <DeLeon.Rafael@epa.gov>; Mackey, Cyndy <Mackey.Cyndy@epa.gov>; Leff, Karin <Leff.Karin@epa.gov>; Muller, Marie <MULLER.MARIE@EPA.GOV>

Cc: Gardner, Monica <Gardner.Monica@epa.gov>; Patterson, Kenneth <Patterson.Kenneth@epa.gov>; Rae, Sarah <Rae.Sarah@epa.gov>; Spina, Providence <Spina.Providence@epa.gov>; Vizard, Elizabeth <Vizard.Elizabeth@epa.gov>; Swack, David <Swack.David@epa.gov>; Warren, JohnM <Warren.JohnM@epa.gov>; Dalzell, Sally <Dalzell.Sally@epa.gov>; Azad, Ava <Azad.Ava@epa.gov>; Folkemer, Nathaniel <Folkemer.Nathaniel@epa.gov>; Ingram, Amir <Ingram.Amir@epa.gov>

Subject: Administrator Hearing: issue papers- Due August 15th

Importance: High

All,

The Administrator will be testifying before the House Science, Space and Technology Committee in September. OCIR expects that this will be a general oversight hearing to cover a variety of potential topics.

OCIR is asking for any updates/deletions/additions to the attached materials from the spring budget hearings:

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We greatly appreciate your help in getting these papers in final form for clearance by our AA.

Thanks and please let me know any questions.

Caroline

*Caroline Emmerson, Director, Policy and Legislative Coordination Division/OAP/OECA
U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460/ 202-564-1716 (office), emmerson.caroline@epa.gov*

This message is CONFIDENTIAL, and may contain legally privileged information. If you are not the intended recipient, or believe you received this communication in error, please delete it immediately, do not copy, and notify the sender. Thank you.

Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 6/4/2019 4:08:53 PM
To: Folkemer, Nathaniel [Folkemer.Nathaniel@epa.gov]; Emmerson, Caroline [Emmerson.Caroline@epa.gov]; Ingram, Amir [Ingram.Amir@epa.gov]
Subject: RE: Materials for Claire Murray SEP meeting -- REVISED Talking Points

You guys ROCK. Thank you.

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Folkemer, Nathaniel
Sent: Tuesday, June 04, 2019 11:51 AM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Emmerson, Caroline <Emmerson.Caroline@epa.gov>; Ingram, Amir <Ingram.Amir@epa.gov>
Subject: RE: Materials for Claire Murray SEP meeting -- REVISED Talking Points

We will look and see if we can find it for you.

Nate Folkemer
(w) 202-564-0668
(EPA cell) 202-578-9934

From: Makepeace, Caroline
Sent: Tuesday, June 4, 2019 11:49 AM
To: Folkemer, Nathaniel <Folkemer.Nathaniel@epa.gov>; Emmerson, Caroline <Emmerson.Caroline@epa.gov>; Ingram, Amir <Ingram.Amir@epa.gov>
Subject: RE: Materials for Claire Murray SEP meeting -- REVISED Talking Points

Thanks so much!

Q for you --- is there a way to get hold of the transcript of the Senate banking comm hearings on HR 10, held on 7/13/17? That's the 'boyden gray' one I was talking about. My research skills are so lacking!

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Folkemer, Nathaniel
Sent: Tuesday, June 04, 2019 11:40 AM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Emmerson, Caroline <Emmerson.Caroline@epa.gov>;

Ingram, Amir <Ingram.Amir@epa.gov>

Subject: RE: Materials for Claire Murray SEP meeting -- REVISED Talking Points

Caroline,

Thanks for letting us know we can stand down on your request. As I mentioned on the phone, I already started pulling this list of materials and a rough cut/paste list of prior legislation.

Oldest = Goodlatte and Buck amendments from June / July 2015 (used identical language) and email from DOJ of the potential impacts of the amendment.

H.R. 5063 – Judiciary Committee markup notes from 5/11/2016 that includes amendments and discussion of the bill

H.R. 732 – Congressional Record (10/24/2017) included roughly 19 pages of debate, the House Report (3/30/2017) that includes an entire dissenting opinion section

Nate Folkemer

(w) 202-564-0668

(EPA cell) 202-578-9934

From: Makepeace, Caroline

Sent: Tuesday, June 4, 2019 10:38 AM

To: Emmerson, Caroline <Emmerson.Caroline@epa.gov>; Folkemer, Nathaniel <Folkemer.Nathaniel@epa.gov>; Ingram, Amir <Ingram.Amir@epa.gov>

Subject: FW: Materials for Claire Murray SEP meeting -- REVISED Talking Points

Note that we are no longer at the same place in terms of the ask, and that the original ask was not communicated in such strong terms.

Caroline Makepeace

Senior Counsel

Office of Civil Enforcement

US Environmental Protection Agency

202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Makepeace, Caroline

Sent: Tuesday, May 28, 2019 3:29 PM

To: Bailey-Morton, Ethel <Bailey-Morton.Ethel@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>

Cc: Shiffman, Cari <Shiffman.Cari@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>;

Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>

Subject: RE: Materials for Claire Murray SEP meeting -- REVISED Talking Points

The revised talking points, attached

Caroline Makepeace

Senior Counsel

Office of Civil Enforcement

US Environmental Protection Agency

202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Bailey-Morton, Ethel
Sent: Tuesday, May 28, 2019 3:06 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Cc: Shiffman, Cari <Shiffman.Cari@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>
Subject: RE: Materials for Claire Murray SEP meeting

Caroline,

Please provide copies to the IO office for this meeting tomorrow.

Thanks,
Ethel

From: Makepeace, Caroline
Sent: Tuesday, May 28, 2019 3:04 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Cc: Shiffman, Cari <Shiffman.Cari@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Bailey-Morton, Ethel <Bailey-Morton.Ethel@epa.gov>
Subject: RE: Materials for Claire Murray SEP meeting

Just got some feedback from Larry on the talkers, so will be tweaking that piece and re-sending.

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Makepeace, Caroline
Sent: Tuesday, May 28, 2019 2:57 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Cc: Shiffman, Cari <Shiffman.Cari@epa.gov>; Rosemarie Kelley <Kelley.Rosemarie@epa.gov>; Karin Koslow <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Amy Porter <Porter.Amy@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Bailey-Morton, Ethel <Bailey-Morton.Ethel@epa.gov>
Subject: Materials for Claire Murray SEP meeting

Attached are talking points and background materials for tomorrow's meeting with Claire Murray, on SEPs in state and local government cases.

- 1) Talking Points for the Wednesday discussion with Claire Murray
- 2) Examples of Typical Muni SEPs
- 3) Synopsis of current state of affairs on SEPs, with DOJ/AAG
- 4) SEP Fact Sheet
- 5) 1977 MOU with DOJ

Ex. 5 AC/DP

Just let us know if you have any questions.

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Makepeace, Caroline
Sent: Tuesday, May 28, 2019 12:10 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Cc: Shiffman, Cari <Shiffman.Cari@epa.gov>; Rosemarie Kelley <Kelley.Rosemarie@epa.gov>; Karin Koslow <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Amy Porter <Porter.Amy@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>
Subject: Advance copy of Revised Talking points for Claire Murray SEP meeting

Susan –

Ex. 5 AC/DP

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 5/8/2019 4:45:45 PM
To: Ihlenburg, Erick [Ihlenburg.Erick@epa.gov]; Villatora, Liliana [Villatora.Liliana@epa.gov]; Buettner, Robert [Buettner.Robert@epa.gov]; LaVigna, Gaetano [LaVigna.Gaetano@epa.gov]; Slizys, Ray [Slizys.Ray@epa.gov]; Patel, Harish [Patel.Harish@epa.gov]
CC: Klepp, Robert [Klepp.Robert@epa.gov]
Subject: RE: **Ex. 7(A)**

Thanks, Erick. I'm very glad this worked out.

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Ihlenburg, Erick
Sent: Wednesday, May 08, 2019 10:48 AM
To: Villatora, Liliana <Villatora.Liliana@epa.gov>; Buettner, Robert <Buettner.Robert@epa.gov>; LaVigna, Gaetano <LaVigna.Gaetano@epa.gov>; Slizys, Ray <Slizys.Ray@epa.gov>; Patel, Harish <Patel.Harish@epa.gov>
Cc: Klepp, Robert <Klepp.Robert@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: FW: **Ex. 7(A)**

Ex. 5 AC/AWP/DP

Erick

From: Silverman, Matthew (USANYE) <Matthew.Silverman@usdoj.gov>
Sent: Wednesday, May 08, 2019 9:44 AM
To: Ihlenburg, Erick <Ihlenburg.Erick@epa.gov>
Subject: RE: **Ex. 7(A)**

Ex. 5 AC/AWP/DP

Matt

From: Ihlenburg, Erick <Ihlenburg.Erick@epa.gov>
Sent: Wednesday, March 20, 2019 12:10 PM
To: Silverman, Matthew (USANYE) <MSilverman@usa.doj.gov>
Subject: **Ex. 7(A)**

Hi Matt,

Ex. 5 AC/AWP/DP

FYI, I'll be out on leave starting this afternoon through next Tuesday. Will touch base with you again later next week.

Erick

Erick R. Ihlenburg
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007
Phone: (212) 637-3250
Fax: (212) 637-3199



Note: This message is confidential and may contain legally privileged material. If you are not the intended recipient, you are notified that any viewing, disclosure, copying or other unauthorized use of this message, including attachments, is strictly prohibited. If you received this message in error, please notify the sender immediately and delete this message and any attachments. Thank you.

Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 5/2/2019 7:25:48 PM
To: karen.dworkin@usdoj.gov
Subject: RE: muni SEPs

Actually, that's not inconsistent with what you heard, just a different focus.

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Makepeace, Caroline
Sent: Thursday, May 02, 2019 3:11 PM
To: karen.dworkin@usdoj.gov
Subject: Re: muni SEPs

This is what folks are saying here:

Ex. 5 AC/AWP/DP

Sent from my iPhone

On May 2, 2019, at 2:18 PM, Dworkin, Karen (ENRD) <Karen.Dworkin@usdoj.gov> wrote:

Ex. 5 AC/AWP/DP

Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 6/26/2019 8:03:36 PM
To: karen.dworkin@usdoj.gov
Subject: RE: Hattiesburg

Ex. 5 AC/DP

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Makepeace, Caroline
Sent: Wednesday, June 26, 2019 3:46 PM
To: Dworkin, Karen (ENRD) <Karen.Dworkin@usdoj.gov>
Subject: RE: Hattiesburg

Henry Friedman.
Thanks, Karen.

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
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From: Dworkin, Karen (ENRD) <Karen.Dworkin@usdoj.gov>
Sent: Wednesday, June 26, 2019 3:44 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: Hattiesburg

First I heard. I'll check it out. who were they told that by?

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Wednesday, June 26, 2019 3:34 PM
To: Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV>
Subject: Hattiesburg

Hi Karen –

Ex. 5 AC/DP

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 5/23/2019 8:46:06 PM
To: Amy Porter [Porter.Amy@epa.gov]; Karin Koslow [Koslow.Karin@epa.gov]
Subject: FW: Briefing Papers for the Third-Party Payments and SEPs Briefing on Friday, April 19, 2019 at 10:00 A.M.
Attachments: LPS-#268841-v1-TPP_Briefing_Paper_041519_External.DOCX; LPS-#268842-v1-SEPs_Briefing_Paper_041519_External.DOCX

DOJ's SEP briefing papers, sans attachments (since those included OLC opinions)

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Miller, Wendy (ENRD) <Wendy.Miller@usdoj.gov>
Sent: Monday, April 15, 2019 3:20 PM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>
Cc: bruce.gelber@usdoj.gov; karen.dworkin@usdoj.gov; justin.smith@usdoj.gov
Subject: Briefing Papers for the Third-Party Payments and SEPs Briefing on Friday, April 19, 2019 at 10:00 A.M.

CLOSE-HOLD MATERIALS ATTACHED

Ex. 5 AC/DP

Thanks very much.

Wendy J. Miller
Senior Counsel
Law and Policy Section
Environment and Natural Resources Division
Department of Justice
Phone: 202-616-6557
Email: Wendy.Miller@usdoj.gov

Please note that this message and any attachments may be confidential and subject to privilege.

From: Gelber, Bruce (ENRD) <BGelber@ENRD.USDOJ.GOV>
Sent: Monday, April 8, 2019 11:53 AM
To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Mariani, Tom (ENRD) <TMariani@ENRD.USDOJ.GOV>

Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Heminger, Justin (ENRD) <JHeminger2@ENRD.USDOJ.GOV>; Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV>; Smith, Justin (ENRD) <JSmith2@ENRD.USDOJ.GOV>; Miller, Wendy (ENRD) <WMiller@ENRD.USDOJ.GOV>; Wardzinski, Karen (ENRD) <KWardzinsk@ENRD.USDOJ.GOV>

Subject: RE: Briefing on SEPs

Yes. You are invited. Jeff now has a conflict on Friday. Meeting will probably be moved to Thursday or into next week. Stay tuned.

Justin – can you let EPA know when meeting is rescheduled. Thanks

From: Starfield, Lawrence <Starfield.Lawrence@epa.gov>

Sent: Monday, April 8, 2019 10:19 AM

To: Gelber, Bruce (ENRD) <BGelber@ENRD.USDOJ.GOV>; Mariani, Tom (ENRD) <TMariani@ENRD.USDOJ.GOV>

Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>

Subject: Briefing on SEPs

Bruce and Tom,

I understand that Susan and I (and OCE, I hope) are invited to the briefing for Jeff on Friday re: SEPs – correct? Could you have someone send Cari Shiffman the details? She is at 202-564-2898. Thanks.

Larry

Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 4/29/2019 5:48:22 PM
To: Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]; Buterbaugh, Kristin [Buterbaugh.Kristin@epa.gov]
CC: Koslow, Karin [Koslow.Karin@epa.gov]; Amy Porter [Porter.Amy@epa.gov]
Subject: RE: Follow-up Items to OCE Weekly 4-25-19
Attachments: Background on Municipal Settlements Including Supplemental Environmental Projects.docx

Attached is what I've put together from WED. Let me know if you think it needs revision in any way.

Ex. 5 AC/DP

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Kelley, Rosemarie
Sent: Sunday, April 28, 2019 10:19 PM
To: Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Cc: Koslow, Karin <Koslow.Karin@epa.gov>
Subject: Re: Follow-up Items to OCE Weekly 4-25-19

John--

Did you get anything from WED re: SEPs in muni cases?

Rosemarie

From: Fogarty, Johnpc
Sent: Thursday, April 25, 2019 4:41 PM
To: Bodine, Susan; Buterbaugh, Kristin; Sullivan, Greg; Saenz, Diana; Makepeace, Caroline
Cc: Starfield, Lawrence; Traylor, Patrick; Shiffman, Cari; Branning, Hannah; Kelley, Rosemarie
Subject: RE: Follow-up Items to OCE Weekly 4-25-19

OK, we heard the timeline but will pull together some examples.

From: Bodine, Susan

Sent: Thursday, April 25, 2019 4:40 PM

To: Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Sullivan, Greg <Sullivan.Greg@epa.gov>; Saenz, Diana <Saenz.Diana@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>

Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Branning, Hannah <Branning.Hannah@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>

Subject: RE: Follow-up Items to OCE Weekly 4-25-19

I was looking for a few examples –

Ex. 5 AC/DP

From: Fogarty, Johnpc

Sent: Thursday, April 25, 2019 4:38 PM

To: Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Sullivan, Greg <Sullivan.Greg@epa.gov>; Saenz, Diana <Saenz.Diana@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>

Cc: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Branning, Hannah <Branning.Hannah@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>

Subject: RE: Follow-up Items to OCE Weekly 4-25-19

Ex. 5 AC/DP

From: Buterbaugh, Kristin

Sent: Thursday, April 25, 2019 4:18 PM

To: Sullivan, Greg <Sullivan.Greg@epa.gov>; Saenz, Diana <Saenz.Diana@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>

Cc: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Branning, Hannah <Branning.Hannah@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>

Subject: Follow-up Items to OCE Weekly 4-25-19

Good afternoon,

Here the follow-up items from today's OCE Weekly:

1. National Mining Association meeting

Ex. 5 AC/DP

2. SEP meeting

Ex. 5 AC/DP

Please let me know if there are any questions. Thank you.

Kristin Buterbaugh

Special Assistant

OECA - Office of Civil Enforcement

U.S. Environmental Protection Agency

WJC South 3119C

1200 Pennsylvania Avenue, NW

Washington, DC 20460

(202) 564-4479

Buterbaugh.Kristin@epa.gov

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Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 10/1/2019 3:39:47 PM
To: Rae, Sarah [Rae.Sarah@epa.gov]; Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Koslow, Karin [Koslow.Karin@epa.gov]; Buterbaugh, Kristin [Buterbaugh.Kristin@epa.gov]; Pollins, Mark [Pollins.Mark@epa.gov]; Theis, Joseph [Theis.Joseph@epa.gov]; Denton, Loren [Denton.Loren@epa.gov]
CC: Amy Porter [Porter.Amy@epa.gov]; Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]
Subject: RE: **Ex. 5 AC/AWP/DP**

That's peculiar, since that sentence wasn't in what I sent and the divisions reviewed, or what Rosemarie sent to the front office, which were dated 9/16. What Susan B sent over was dated 9/21, so maybe it was changed by Susan or by Larry?

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Rae, Sarah <Rae.Sarah@epa.gov>
Sent: Tuesday, October 01, 2019 11:24 AM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>; Theis, Joseph <Theis.Joseph@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>
Cc: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: **Ex. 5 AC/AWP/DP**

Rosemarie,

Ex. 5 AC/DP

Please let me know if you have any questions,

Sarah Rae
Attorney-Adviser
United States Environmental Protection Agency
OECA - OCE - Water Enforcement Division
WJC South 3110B (Mail Code 2243-A)
1200 Pennsylvania Avenue NW
Washington, DC 20004
(202) 564-2841 (FAX 202-564-0018)
Rae.Sarah@epa.gov

From: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Sent: Tuesday, October 01, 2019 11:05 AM
To: Koslow, Karin <Koslow.Karin@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Pollins,

Mark <Pollins.Mark@epa.gov>; Theis, Joseph <Theis.Joseph@epa.gov>; Denton, Loren
<Denton.Loren@epa.gov>; Rae, Sarah <Rae.Sarah@epa.gov>

Subject: FW: **Ex. 5 AC/AWP/DP**

FYI

From: Bodine, Susan <bodine.susan@epa.gov>

Sent: Friday, September 27, 2019 4:55 PM

To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>;
Makepeace, Caroline <Makepeace.Caroline@epa.gov>

Cc: Shiffman, Cari <Shiffman.Cari@epa.gov>; Mirza, Sabah <Mirza.Sabah@epa.gov>

Subject: FW: **Ex. 5 AC/AWP/DP**

For your files.

Susan

From: Bodine, Susan

Sent: Friday, September 27, 2019 4:43 PM

To: Clark, Jeffrey (ENRD) <jbcl@usdoj.gov>

Subject: **Ex. 5 AC/AWP/DP**

Jeff,

Ex. 5 AC/AWP/DP

Please let me know if you need additional information.

Susan

Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance
202-564-2440

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From: Susan Bodine

To: Claire Murray

Thru: Jeff Clark

Ex. 5 AC/AWP/DP

Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 4/17/2019 2:25:23 PM
To: Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]; Bodine, Susan [bodine.susan@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]
CC: Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Porter, Amy [Porter.Amy@epa.gov]; Shiffman, Cari [Shiffman.Cari@epa.gov]; Susan Okeefe [OKeefe.Susan@epa.gov]
Subject: RE: SEP summaries, revised version
Attachments: Recent SEP Examples.4.17.19.docx

Susan and Larry –

The attached fixes a small, but potentially confusing, typo in the document.

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Fogarty, Johnpc
Sent: Tuesday, April 16, 2019 5:49 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Cc: Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>
Subject: SEP summaries

Susan and Larry – attached is a document that briefly describes a number of different SEPs that were included in recent cases. It is not intended to be comprehensive of all recent SEPs but is instead simply intended to illustrate the range of different projects included in various settlements under a variety of statutes.

Let us know if you want any additional information in preparation for the meeting on Friday.

From: Fogarty, Johnpc
Sent: Monday, April 15, 2019 4:56 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Cc: Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>
Subject: Materials for discussion with DOJ on SEPs

Susan and Larry –

Attached are several materials in advance of the meeting with DOJ on Friday on SEPs.

First are two briefing papers (on SEPs and third-party payments), that were prepared by DOJ. These were just shared with us and we have not yet had a chance to review.

Second, also attached is a chart showing SEP annual results for the past ten years, and a copy of the current and consolidated SEP Policy (the “2015 Update”). We are also pulling together a variety of recent examples of SEPs which we will forward Wednesday, in advance of briefing you on all of this at the OCE general Thursday.

Ex. 5 AC/DP

Please let us know if you have any questions or would like other materials.

Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 4/9/2019 1:25:55 PM
To: Porter, Amy [Porter.Amy@epa.gov]
Subject: Fwd: Houston

Sorry forgot to add you.

Sent from my iPhone

Begin forwarded message:

From: "Makepeace, Caroline" <Makepeace.Caroline@epa.gov>
Date: April 9, 2019 at 9:25:16 AM EDT
To: "Theis, Joseph" <Theis.Joseph@epa.gov>
Cc: "Kelley, Rosemarie" <Kelley.Rosemarie@epa.gov>
Subject: Re: Houston

Thanks!

Ex. 5 AC/DP

Sent from my iPhone

On Apr 9, 2019, at 9:14 AM, Theis, Joseph <Theis.Joseph@epa.gov> wrote:

Caroline, Here is Susan's email on Houston that Rosemarie mentioned.

Joseph G. Theis
Associate Director
Water Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. EPA (2243A)
1200 Pennsylvania Ave, NW
Washington, D.C. 20460
(202)564-4053

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From: Bodine, Susan
Sent: Friday, April 05, 2019 4:23 PM
To: Theis, Joseph <Theis.Joseph@epa.gov>
Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>
Subject: RE: interpretive statement and follow-up Houston question

Ex. 5 AC/AWP/DP

From: Theis, Joseph

Sent: Friday, April 5, 2019 2:51 PM

To: Bodine, Susan <bodine.susan@epa.gov>

Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Sullivan, Greg <Sullivan.Greg@epa.gov>; Bahk, Benjamin <Bahk.Benjamin@epa.gov>; Fisher, Mike <Fisher.Mike@epa.gov>

Subject: RE: interpretive statement and follow-up Houston question

Ex. 5 AC/DP

Ex. 5 AC/DP

Thanks,
- Joe

Joseph G. Theis
Associate Director
Water Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. EPA (2243A)
1200 Pennsylvania Ave, NW
Washington, D.C. 20460
(202)564-4053

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Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 9/17/2019 3:47:08 PM
To: Porter, Amy [Porter.Amy@epa.gov]
Subject: Re: **Ex. 5 AC/DP**

Ex. 5 Deliberative Process (DP)

Sent from my iPhone

On Sep 17, 2019, at 11:15 AM, Porter, Amy <Porter.Amy@epa.gov> wrote:

Thank you

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Tuesday, September 17, 2019 11:15 AM
To: Porter, Amy <Porter.Amy@epa.gov>
Subject: Re: **Ex. 5 AC/DP**

Ex. 5 Deliberative Process (DP)

Sent from my iPhone

On Sep 17, 2019, at 11:07 AM, Porter, Amy <Porter.Amy@epa.gov> wrote:

Thanks, Caroline. I assume DOJ, OCE Divisions, and regions have reviewed?

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Monday, September 16, 2019 3:19 PM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>
Cc: Pollins, Mark <Pollins.Mark@epa.gov>; Theis, Joseph <Theis.Joseph@epa.gov>; Brooks, Phillip <Brooks.Phillip@epa.gov>; Chapman, Apple <Chapman.Apple@epa.gov>
Subject: **Ex. 5 AC/DP**

Ex. 5 AC/AWP/DP

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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<Brookhaven Summary 09 16 19.docx>

<Hattiesburg MS Summary 09 16 19 .docx>

Ex. 5 AC/DP

Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 9/16/2019 6:57:52 PM
To: Dworkin, Karen (ENRD) [Karen.Dworkin@usdoj.gov]
Subject: RE: URGENT - for your review - Brookhaven and Hattiesburg -- better versions

Thanks so much!

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Dworkin, Karen (ENRD) <Karen.Dworkin@usdoj.gov>
Sent: Monday, September 16, 2019 2:12 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: FW: URGENT - for your review - Brookhaven and Hattiesburg -- better versions

Here you go.

From: Gallagher, Mark (ENRD) <MGallagher@ENRD.USDOJ.GOV>
Sent: Monday, September 16, 2019 1:56 PM
To: Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV>
Subject: Fwd: URGENT - for your review - Brookhaven and Hattiesburg -- better versions

FYI ...
Begin forwarded message:

From: "Silverman, Matthew (USANYE)" <MSilverman@usa.doj.gov>
Date: September 16, 2019 at 1:39:25 PM EDT
To: "Gallagher, Mark (ENRD)" <MGallagher@ENRD.USDOJ.GOV>
Cc: "Beckmann, Diane (USANYE)" <DBeckmann@usa.doj.gov>
Subject: RE: URGENT - for your review - Brookhaven and Hattiesburg -- better versions

Hi Mark,

Ex. 5 AC/AWP/DP

Matt

From: Gallagher, Mark (ENRD) <MGallagher@ENRD.USDOJ.GOV>
Sent: Monday, September 16, 2019 8:57 AM
To: Silverman, Matthew (USANYE) <MSilverman@usa.doj.gov>

Cc: Beckmann, Diane (USANYE) <DBeckmann@usa.doj.gov>

Subject: Re: URGENT - for your review - Brookhaven and Hattiesburg -- better versions

Please let me know what you find out. The sooner the better.

Thanks,

-Mark

On Sep 13, 2019, at 3:23 PM, Silverman, Matthew (USANYE) <MSilverman@usa.doj.gov> wrote:

Ex. 5 AC/AWP/DP

what

From: Gallagher, Mark (ENRD) <MGallagher@ENRD.USDOJ.GOV>

Sent: Friday, September 13, 2019 10:22 AM

To: Silverman, Matthew (USANYE) <MSilverman@usa.doj.gov>

Cc: Beckmann, Diane (USANYE) <DBeckmann@usa.doj.gov>

Subject: Re: URGENT - for your review - Brookhaven and Hattiesburg -- better versions

Ok that's what I thought

By the way if true that suggests we don't need "pre approval" of this CJ

M

On Sep 13, 2019, at 10:01 AM, Silverman, Matthew (USANYE) <MSilverman@usa.doj.gov> wrote:

Ex. 5 AC/AWP/DP

From: Gallagher, Mark (ENRD) <MGallagher@ENRD.USDOJ.GOV>

Sent: Friday, September 13, 2019 9:52 AM

To: Beckmann, Diane (USANYE) <DBeckmann@usa.doj.gov>; Silverman, Matthew (USANYE) <MSilverman@usa.doj.gov>

Subject: Fwd: URGENT - for your review - Brookhaven and Hattiesburg -- better versions

Hi guys

Do you know the answer?

-Mark

Begin forwarded message:

From: "Dworkin, Karen (ENRD)" <KDworkin@ENRD.USDOJ.GOV>

Date: September 13, 2019 at 8:49:32 AM EDT

To: "Gallagher, Mark (ENRD)" <MGallagher@ENRD.USDOJ.GOV>

Subject: FW: URGENT - for your review - Brookhaven and Hattiesburg -- better versions

Mark, do you know the answer to Caroline's question re Brookhaven.

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>

Sent: Thursday, September 12, 2019 2:34 PM

To: Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV>

Subject: RE: URGENT - for your review - Brookhaven and Hattiesburg -- better versions

Ex. 5 AC/AWP/DP

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Dworkin, Karen (ENRD) <Karen.Dworkin@usdoj.gov>
Sent: Thursday, September 12, 2019 2:24 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: URGENT - for your review - Brookhaven and Hattiesburg -- better versions

Having folks that know these cases review these now. Will get back to you very soon.

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Thursday, September 12, 2019 12:55 PM
To: Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV>
Subject: FW: URGENT - for your review - Brookhaven and Hattiesburg -- better versions

Ugh, version control issues, because my computer kept crashing – please look at these instead. Sorry!

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Makepeace, Caroline
Sent: Thursday, September 12, 2019 12:42 PM
To: karen.dworkin@usdoj.gov
Subject: FW: URGENT - for your review - Brookhaven and Hattiesburg

Karen –

Just forwarding the attached for a quick accuracy check (have asked the regional contacts to look over as well). I believe (after some misunderstanding after the RC meeting Tuesday about whether there would be a request to **Ex. 5 AC/DP**) that the request will be coming quite soon.
Thanks!

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement

US Environmental Protection Agency
202-564-6012

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Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 9/12/2019 9:20:10 PM
To: home (makepeace@verizon.net) [makepeace@verizon.net]; 'Gmail' [caromakepeace1@gmail.com]; Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: in case computer does not work
Attachments: Hattiesburg MS Summary 09 12 19 .docx; Brookhaven Summary 09 12 19.docx; **Ex. 5 AC/DP** x

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 9/12/2019 4:54:52 PM
To: karen.dworkin@usdoj.gov
Subject: FW: URGENT - for your review - Brookhaven and Hattiesburg -- better versions
Attachments: Hattiesburg MS 09 12 19.docx; Brookhaven Summary 09 12 19.docx

Ugh, version control issues, because my computer kept crashing – please look at these instead. Sorry!

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
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From: Makepeace, Caroline
Sent: Thursday, September 12, 2019 12:42 PM
To: karen.dworkin@usdoj.gov
Subject: FW: URGENT - for your review - Brookhaven and Hattiesburg

Karen –

Ex. 5 AC/AWP/DP

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
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Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 8/7/2018 8:02:07 PM
To: Zimny, James [zimny.james@epa.gov]; Rog, Morgan [Rog.Morgan@epa.gov]
CC: Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]; Amy Porter [Porter.Amy@epa.gov]
Subject: RE: Corpus Christi SEP updated proposal
Attachments: FINAL 2015 UPDATE TO SEP POLICY.pdf

Hi Guys –

Ex. 5 AC/DP

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Zimny, James
Sent: Tuesday, August 07, 2018 1:22 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Rog, Morgan <Rog.Morgan@epa.gov>
Subject: Corpus Christi SEP updated proposal

Caroline, I just wanted to make sure that you saw the meeting background info that I included in the invite:

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Talking Points on SEPs and Mitigation Projects -- 2/27/18

What are SEPs and Mitigation Projects?

A Supplemental Environmental Project (SEP) is an environmentally beneficial project that is proposed by a defendant to be included in an enforcement settlement. A SEP is:

- Voluntary, and cannot be required or compelled by EPA.
- An action or activity that goes beyond what is required for compliance with any local, state or federal law, or as part of any other enforcement settlement, and provides public health or environmental benefits not otherwise available.
- Developed and implemented by a settling defendant using its own funds
- Included in a settlement only if a defendant is interested in the project and it meets the legal and other criteria contained in EPA's SEP Policy.
- Not a penalty, and SEPs are not accepted in lieu of a federal penalty. Rather, a SEP is one factor that is considered in the development of an appropriate penalty for a settlement. A defendant may receive a reduction in penalty for volunteering to implement a SEP.

Mitigation Projects are similar to SEPs in that they provide an environmental or public health benefit, in the context of a settlement. However, there are several significant differences. Mitigation is:

- Part of the injunctive relief package.
- Aimed at directly redressing or remediating harm done to public health or the environment by the violations at issue.
- Likely to be ordered by a court. It is rooted in a court's equitable authority to require actions that redress the effects of a defendant's noncompliance.
- Not the basis for any penalty mitigation/consideration in a settlement.

Neither SEPs nor mitigation projects:

- Are payments of money to a third party in lieu of penalties.
- Can inadvertently augment or supplement EPA's or another government agency's budget or program, or give the appearance that a federal agency had "constructively received" such funding. *They cannot be:*
 - Used to accomplish work for which the EPA or any other federal agency receives appropriated funds.
 - Directed, controlled, or managed by EPA. And, EPA cannot require a defendant to perform a SEP, nor can EPA require that a defendant perform a specific project as its SEP. EPA can also play no role in the decision to use a 3rd party implementer.
 - Undertaken using federal loans, federal contracts, federal grants, or any other form of federal financial assistance or other federally-provided assistance. And there cannot be any such funding open that could be used for the project.

There are no SEP or mitigation “programs.” Rather, the inclusion of a SEP or mitigation in a particular enforcement settlement is guided by the 2015 Update to the SEP Policy, or the 2012 Mitigation Guidance, which outline the legal and policy guidelines and requirements that must be met.

States and tribes which are Co-plaintiffs in an enforcement action can evaluate proposals and accept SEPs (or, in appropriate cases where mitigation is warranted, participate in the negotiation of mitigation projects).

- In fact, depending on their particular independent legal authorities and policies, State and tribal co-plaintiffs may be able to accept non-federal SEPs that might not meet the federal SEP Policy.
- EPA encourages defendants who are interested in proposing a SEP to reach out to the local communities for ideas.
- Case teams may also share ideas that they know would be particularly welcome in a certain community and might have nexus. However, they must be aware of the delicate balance between encouraging and helping interested defendants to develop viable SEPs, and avoiding any perception that EPA is either pressuring a defendant to propose a SEP, or seeking to exert inappropriate control or influence over a project.

Key Issues to Remember about SEPs and Mitigation:

Projects must have direct “nexus” to the violations at issue:

- There must be a tight, clear connection or relationship between the project benefits and the specific violations being resolved.
 - The project must advance at least one objective, and not be inconsistent with any provision. of the underlying statute.
 - It should be easy and straightforward to explain how to “connect the dots” between the particular violations and the benefits of the project (and there should not be too many “dots” to connect).
- Generally, the project must involve the same pollutant or same health effects as were involved in the specific violations you are settling, addressing the same adverse impacts or risks to which the violations contributed, or preventing future similar violations.
- It is not enough that a project is a good idea, or something beneficial that a community wants, or a company wants to do, or generally beneficial to the environment in the same medium, or in the same geographic location.
- In some cases, there may be sufficient nexus when a project addresses a different environmental medium than that in which the violation occurred, or addresses a different pollutant, provided that there is a direct, straightforward connection to the different medium or pollutant.
 - *E.g.*, where a project addresses:
 - the same pollutant at issue in the violation, but in a different environmental

- medium;
 - the same public health risk or effects presented by the violation (*e.g.*, pollutants that contribute to childhood asthma other than the asthma-inducing pollutant that was at issue in the violation); or
 - the same environmental risk posed by the violation (*e.g.*, where hazardous waste violations contributed to particular water quality or aquatic ecosystem impacts through deposition in the water and the SEP is designed to address those same water quality or aquatic ecosystem impacts in the same waterbody).
- Note that, since mitigation is aimed at restoring, as much as possible, the *status quo ante*, before the violations occurred, there should be an even closer connection, than for a SEP, between the project and the harm it addresses.

Projects cannot be cash donations or payments to a third party

- Cash donations or payments, in and of themselves, provide no direct, tangible environmental or public health benefit. As there is no environmental or public health benefit, there is no nexus.
- The Attorney General recently issued a memorandum prohibiting settlement terms that include monetary payments to non-governmental third parties (with certain limited exceptions).
- Consistent with this memo, EPA's policy and practice has long been against including such terms in settlement (except where authorized by statute).
- The memo has not changed EPA policy or practice on SEPs or mitigation.
 - However, it continues to be advisable to draft documents to avoid misperceptions or confusion.

Careful drafting of any documents involving projects is important

- Case teams should take care in drafting settlement documents to ensure that projects are:
 - Clearly framed and described as work to be done, or discrete projects, not as cash donations or payments.
 - Actions for which defendants remain solely responsible to perform and complete.
 - It should also be clear that any decision to employ a 3rd party to help implement the project is the defendant's.

Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 9/9/2019 3:01:13 PM
To: Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]
Subject: RE: Draft SEPs State/Local Memo

It's weird, don't know how I got the two drafts but not the final, as well! In any case....close enough. Appreciate your looking, even as you "management meet!"

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>
Sent: Monday, September 09, 2019 10:59 AM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: Draft SEPs State/Local Memo

Ok that was all that I had

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Monday, September 09, 2019 10:51 AM
To: Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>
Subject: RE: Draft SEPs State/Local Memo

Thx for looking but there were some changes before it was final.

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>
Sent: Monday, September 09, 2019 10:38 AM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: FW: Draft SEPs State/Local Memo

Lookie what I found

From: Bodine, Susan <bodine.susan@epa.gov>
Sent: Tuesday, July 30, 2019 10:25 AM
To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>

Cc: Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>

Subject: RE: Draft SEPs State/Local Memo

Ex. 5 AC/AWP/DP

See attached. Comments welcome.

Susan

From: Starfield, Lawrence

Sent: Monday, July 15, 2019 8:27 AM

To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>

Cc: Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>

Subject: Re: Draft SEPs State/Local Memo

PRIVILEGED AND CONFIDENTIAL

Rosemarie,

Let's do the best we can.

Ex. 5 AC/DP

Lots to discuss.

Larry

Sent from my iPhone

On Jul 15, 2019, at 7:40 AM, Kelley, Rosemarie <Kelley.Rosemarie@epa.gov> wrote:

Larry -

Given that Caroline Makepeace is out through next Friday and John is tied up with Limetree for the next couple of days (and Amy is out until Thursday), Karin and I will talk this morning about how we will develop a response and when we can get it done.

Rosemarie

Rosemarie Kelley, Director
Office of Civil Enforcement
OECA

From: Fogarty, Johnpc
Sent: Monday, July 15, 2019 7:24:32 AM
To: Starfield, Lawrence
Cc: Kelley, Rosemarie; Koslow, Karin; Makepeace, Caroline
Subject: Re: Draft SEPs State/Local Memo

I'm in all day negotiations today and tomorrow (Limetree) and won't have a chance to look at this until mid-week, unfortunately.

Sent from my iPhone

On Jul 14, 2019, at 6:48 PM, Starfield, Lawrence <Starfield.Lawrence@epa.gov> wrote:

Here is Jeff Clark's draft memo on SEPs. I haven't read it yet, but wanted to get it to you ASAP. Please let Susan and I know what you think and what next steps you recommend. I read it tonight or in the morning.

Thanks.

Larry

From: Bodine, Susan
Sent: Sunday, July 14, 2019 6:06 PM
To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>
Subject: Fwd: Draft SEPs State/Local Memo

Sent from my iPad

Begin forwarded message:

From: "Clark, Jeffrey (ENRD)" <jbc1@usdoj.gov>
Date: July 14, 2019 at 4:38:27 PM EDT
To: "bodine.susan@epa.gov" <bodine.susan@epa.gov>
Cc: "Brightbill, Jonathan (ENRD)" <Jonathan.Brightbill@usdoj.gov>, "Gelber, Bruce (ENRD)" <Bruce.Gelber@usdoj.gov>
Subject: Draft SEPs State/Local Memo

Susan, please see the attached.

Ex. 5 Attorney Client (AC)

Jeff

<ENRD State and Local SEP Memo External Draft 1.docx>

Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 2/5/2018 9:48:05 PM
To: Gary Jonesi [Jonesi.Gary@epa.gov]; Williamson, Caroline [williamson.caroline@epa.gov]
Subject: FW: SETTLEMENT CONFIDENTIAL - Town of Brookhaven and Wehran Energy Corp. - SEP
Attachments: BrookhavenLandfillCaseSummary.docx

FYI –

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Cardile, Joseph
Sent: Monday, February 05, 2018 4:46 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Cc: Buettner, Robert <Buettner.Robert@epa.gov>; Villatora, Liliana <Villatora.Liliana@epa.gov>; LaVigna, Gaetano <LaVigna.Gaetano@epa.gov>; Urdaz, Damaris <Urdaz.Damaris@epa.gov>; Ritz, Phillip <Ritz.Phillip@epa.gov>
Subject: RE: SETTLEMENT CONFIDENTIAL - Town of Brookhaven and Wehran Energy Corp. - SEP

Ex. 5 AC/AWP/DP

Thx
Joe

Joseph Cardile, Environmental Engineer
Stationary Source Compliance Section
Air Compliance Branch
U.S. EPA, Region 2
290 Broadway, 21st Floor
New York, New York 10007-1866
Phone (212) 637-4054
Email: Cardile.Joseph@epa.gov

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From: Makepeace, Caroline
Sent: Monday, February 05, 2018 2:38 PM
To: Cardile, Joseph <Cardile.Joseph@epa.gov>
Subject: RE: SETTLEMENT CONFIDENTIAL - Town of Brookhaven and Wehran Energy Corp. - SEP

Hi Joe

Ex. 5 AC/DP

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Cardile, Joseph
Sent: Thursday, February 01, 2018 6:18 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Cc: Jonesi, Gary <Jonesi.Gary@epa.gov>; Buettner, Robert <Buettner.Robert@epa.gov>; Villatora, Liliana <Villatora.Liliana@epa.gov>; Urdaz, Damaris <Urdaz.Damaris@epa.gov>; Ritz, Phillip <Ritz.Phillip@epa.gov>
Subject: FW: SETTLEMENT CONFIDENTIAL - Town of Brookhaven and Wehran Energy Corp. - SEP

Ex. 5 AC/DP

Thx
Joe

Joseph Cardile, Environmental Engineer
Stationary Source Compliance Section
Air Compliance Branch
U.S. EPA, Region 2
290 Broadway, 21st Floor
New York, New York 10007-1866
Phone (212) 637-4054
Email: Cardile.Joseph@epa.gov

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From: Ritz, Phillip
Sent: Thursday, February 01, 2018 6:14 PM
To: Cardile, Joseph <Cardile.Joseph@epa.gov>
Subject: FW: SETTLEMENT CONFIDENTIAL - Town of Brookhaven and Wehran Energy Corp. - SEP

From: Simpson, James
Sent: Thursday, April 13, 2017 3:35 PM

To: Ritz, Phillip <Ritz.Phillip@epa.gov>; LaVigna, Gaetano <LaVigna.Gaetano@epa.gov>; Buettner, Robert <Buettner.Robert@epa.gov>

Cc: Villatora, Liliana <Villatora.Liliana@epa.gov>

Subject: FW: SETTLEMENT CONFIDENTIAL - Town of Brookhaven and Wehran Energy Corp. - SEP

Ex. 5 AC/AWP/DP

Regards,
Jay

From: Robbins, Virginia [<mailto:RobbinV@bsk.com>]

Sent: Thursday, April 13, 2017 12:39 PM

To: Simpson, James <Simpson.James@epa.gov>

Cc: Beckmann, Diane (USANYE) <Diane.Beckmann@usdoj.gov>; Kevin Johnston <kjohnston@brookhavenny.gov>; Michael J. Cahill <MJC@GermanoCahill.com>; Tyson, Robert <TysonR@BSK.com>

Subject: SETTLEMENT CONFIDENTIAL - Town of Brookhaven and Wehran Energy Corp. - SEP

Dear Jay,

On behalf of the Town of Brookhaven and Wehran Energy, please find attached for USEPA's review and comment our letter dated today detailing the estimated costs and task schedule for the proposed Supplemental Environmental Project involving the installation of a solar energy conversion system by the Town.

I am available to discuss this letter at your convenience.

Best, Ginny

Virginia C. Robbins, Esq.

Environmental and Energy Practice Group

315.218.8182 Direct

315.218.8000 Alt

315.218.8100 Fax

315.569.4538 Cell

vrobbs@bsk.com

[Bio](#)



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Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 8/29/2019 4:43:37 PM
To: Rosemarie Kelley [Kelley.Rosemarie@epa.gov]; Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]; Amy Porter [Porter.Amy@epa.gov]; Karin Koslow [Koslow.Karin@epa.gov]
CC: Buterbaugh, Kristin [Buterbaugh.Kristin@epa.gov]
Subject: Cheat sheet list of Ex. 5 AC/DP
Attachments: Ex. 5 AC/DP

Ex. 5 AC/DP

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 6/8/2017 8:43:02 PM
To: Gary Jones [Jonesi.Gary@epa.gov]
Subject: FW: 6/5/17 AG Memo "Prohibition on Settlement Payments to Third Parties"
Attachments: sepupdatedpolicy15.pdf; 2ndeditionsecuringmitigationemo.pdf; Prohibition_Settlement Payments_06.05.2017.pdf

Importance: High

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Porter, Amy
Sent: Thursday, June 08, 2017 2:19 PM
To: Shinkman, Susan <Shinkman.Susan@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Cavalier, Beth <Cavalier.Beth@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: 6/5/17 AG Memo "Prohibition on Settlement Payments to Third Parties"
Importance: High

Susan – As discussed, please see draft Email to HQ and Regional Enforcement Managers, below. (Thanks to Beth for initial drafting) Please let me know if you would like to discuss, or if you would like me to compile a list of addressees, etc.

Thanks!
Amy

Dear Colleagues -

On June 5, 2017 the Department of Justice's Office of the Attorney General released a memorandum with the subject "Prohibition on Settlement Payments to Third Parties". (See attached).

I understand there are a lot of questions about how this memo affects our work – especially on supplemental environmental projects (SEPs) and mitigation. We have had preliminary conversations with our DOJ counterparts and while the conversation is ongoing, I wanted to let you know our preliminary read and provide some clarity about continuing work on SEPs and mitigation.

The memorandum states, in part, *"Effective immediately, Department attorneys may not enter into any agreement on behalf of the United States in settlement of federal claims or charges, including agreements settling civil litigation, accepting plea agreements, or deferring or declining prosecution in a criminal matter, that directs or provides for a payment or loan to any non-governmental person or entity that is not a party to the dispute."*

The memorandum further lays out three limited exceptions to this policy:

- 1) The policy does not apply to an otherwise lawful payment or loan that provides restitution to a victim or that otherwise directly remedies the harm that is sought to be redressed;
- 2) The policy does not apply to payments for legal or other professional services rendered in connection with the case; and
- 3) The policy does not apply to payments expressly authorized by statute, including restitution and forfeiture.

As SEPs are not payments or loans, but rather discrete environmentally beneficial projects implemented to redress harm, **we will continue to consider including in our settlements SEPs that fully comply with the 2015 Update to the SEP Policy.** Similarly, as mitigation projects redress harm and are part of the injunctive relief required in settlements, **we will continue to consider inclusion of mitigation projects that fully comply with OECA's Mitigation Guidance.** These documents are attached for your convenience, and also available on OCE's SEP Intranet site: <http://intranet.epa.gov/oeca/oce/io/sep/sep.html>

We will continue to ensure that SEPs and mitigation have appropriate nexus and are properly and accurately characterized in settlements as discrete projects. While estimated costs of such projects may be considered in evaluating the appropriateness for inclusion in a settlements, projects are not cash payments or loans. Therefore to avoid any misunderstandings and the ensure that all parties to the settlement fully understand the project that included as a SEP or mitigation, such projects should not be characterized in monetary terms in the settlement documents. For more information, please see the FAQs posted on the SEP Intranet site.

If you have any questions relating to EPA's SEP Policy or Mitigation Guidance, please contact Amy Porter, Director, Crosscutting Policy Staff or Caroline Makepeace or Beth Cavalier of her staff. Caroline can be reached at 202-564-6012. Beth can be reached at 202-564-3271.

Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 8/9/2019 6:52:24 PM
To: Argentieri, Sabrina [argentieri.sabrina@epa.gov]
Subject: RE: Latest News: DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy

Yup, that was one of yesterday's firedrills....and of course, Inside EPA still gets so much wrong, albeit some right. But Thanks for sending!

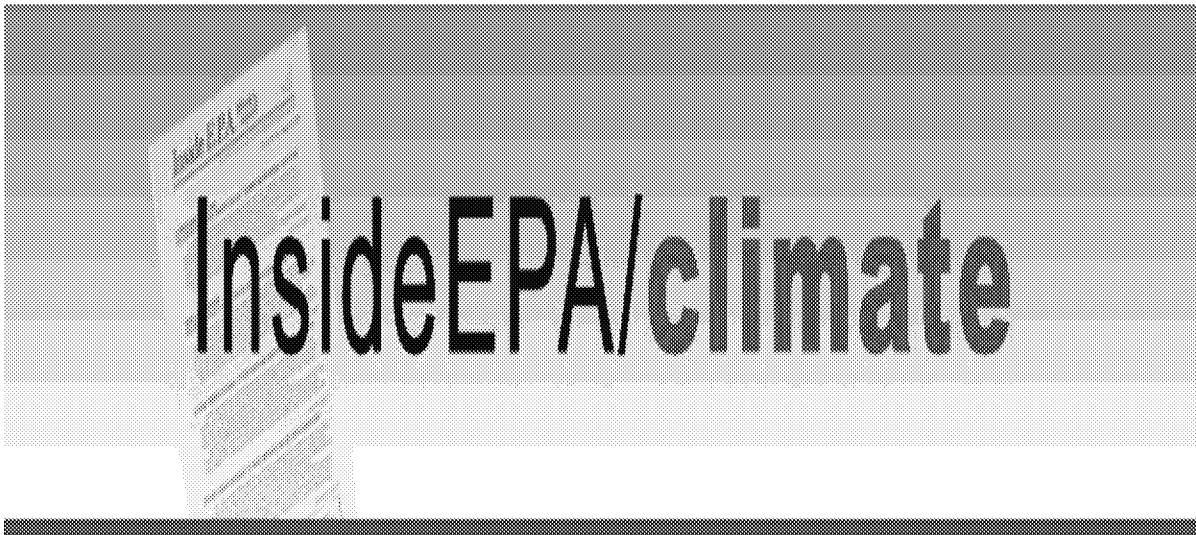
Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Argentieri, Sabrina <argentieri.sabrina@epa.gov>
Sent: Friday, August 09, 2019 2:46 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: FW: Latest News: DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy

I'm sure you saw this, but just in case ...

From: InsideEPA/climate <epa-alerts@iwpnews.com>
Sent: Friday, August 9, 2019 2:24 PM
To: Argentieri, Sabrina <argentieri.sabrina@epa.gov>
Subject: Latest News: DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy



August 9, 2019

Latest News

DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy

AUSTIN, TX -- The Department of Justice (DOJ) is rejecting supplemental environmental projects (SEPs) in settlements it is negotiating with local governmental agencies, a move that appears to undercut department policy that says it will approve the projects as part of deals provided they comply with EPA's SEP policy, attorneys say.

[READ MORE →](#)

EDITORIAL CONTACT

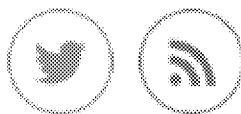
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Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 8/9/2019 6:33:10 PM
To: Porter, Amy [Porter.Amy@epa.gov]
CC: Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]
Subject: Re: penalty paid in the form of a project; looking for the old Walker Smith memo that dictated that non-conforming SEP projects be characterized as penalty and "State Project"

No worries. Things are getting incrementally better here, and in between servicing "the client" (as we have begun to call her) I'm getting a boatload done! All ok on the regional front.

Sent from my iPhone

On Aug 9, 2019, at 9:41 AM, Porter, Amy <Porter.Amy@epa.gov> wrote:

Caroline – I'm so sorry we couldn't hear you on the phone during the general yesterday. That is so frustrating for the one calling in! Thank you for this email and your voicemail. I am not aware of any

Ex. 5 AC/DP

Feel free to call me if you would like to discuss.

Ex. 6 Personal Privacy (PP)

And John, I think this is your neighborhood hunting trip (?) so I hope you are having a great time!

Thanks
Amy

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Thursday, August 08, 2019 2:33 PM
To: Porter, Amy <Porter.Amy@epa.gov>
Cc: Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>
Subject: FW: penalty paid in the form of a project; looking for the old Walker Smith memo that dictated that non-conforming SEP projects be characterized as penalty and "State Project"

This is apparently about Hattiesburg, and I was trying to raise it on the phone to see if there was some movement I was missing. Came in through the side door, through a request for a memo about state penalties and SEPs. I'm still trying to figure out what the regional staff position is...and what point he is trying to make.

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Makepeace, Caroline

Sent: Thursday, August 08, 2019 2:30 PM

To: Bush, William <[Bush.William@epa.gov](mailto:King.Carol@epa.gov)>; King, Carol <King.Carol@epa.gov>

Cc: Rae, Sarah <Rae.Sarah@epa.gov>

Subject: RE: penalty paid in the form of a project; looking for the old Walker Smith memo that dictated that non-conforming SEP projects be characterized as penalty and "State Project"

Hmm, maybe I'm not following you properly, but it sounds like a few different issues might be getting conflated here (which is not surprising since they are definitely related!).

Minimum penalty amounts are one issue, and we look to the combined cash penalty amounts of federal and state penalties, in calculating whether the settlement includes the minimum \$\$ required under the SEP policy. I read the 2005 memo as instructions simply on how to describe the situation where the state can put its penalty into a fund to be used for a project or activity allowable under state laws. That's not the only way to enable a project that is State-only, since there are certainly projects a state wants to do and can, that we either would not accept or could not accept as a federal SEP. I'm not understanding this idea that all the penalty is a federal penalty. If that were true, the MRA would require that all the monies go to the federal treasury, and a state could not receive a share.

But it is true that there still needs to be an overall cash penalty that meets the minimum requirements in the SEP Policy, absent a waiver from the OECA AA. So, maybe the issue you are hashing out is just not

Ex. 5 AC/AWP/DP

Caroline Makepeace

Senior Counsel

Office of Civil Enforcement

US Environmental Protection Agency

202-564-6012

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From: Bush, William <[Bush.William@epa.gov](mailto:King.Carol@epa.gov)>

Sent: Wednesday, August 07, 2019 6:34 PM

To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>; King, Carol <King.Carol@epa.gov>

Cc: Bush, William <[Bush.William@epa.gov](mailto:King.Carol@epa.gov)>

Subject: RE: penalty paid in the form of a project; looking for the old Walker Smith memo that dictated that non-conforming SEP projects be characterized as penalty and "State Project"

What I am saying is that OECA's past position is that in a joint US/State settlement, the penalty in the settlement is the federal penalty - there is not a separate federal penalty and a separate state penalty. The state may get a portion of this federal penalty. And we have said that the federal penalty thus can only mitigated (lowered) by criteria in the EPA SEP Policy - meaning we have to have in the settlement the minimum penalty amount after mitigation (25% or 60% in muni settlements) and that the penalty may only be mitigated by SEPs that meet the federal SEP Policy criteria.

We have told states in the past that they cannot further mitigate (meaning lower) its portion of the federal penalty through a State SEP - otherwise, the settlement wouldn't then contain the minimum penalty amount. And we have said that none of the penalty may be mitigated by a project that is not consistent with the SEP criteria in our policy.

However, to provide some flexibility to allow states to accept additional projects, including those not consistent with our SEP Policy, OECA issued that 2005 memo that allows states, if allowed under state law, to take its portion of the federal penalty in the form of a project regardless of whether such project

meets our SEP Policy. The rationale for this is that total required federal penalty amount is still set forth in the settlement. See the Chattanooga CD as an example.

If we are now saying that a state can do whatever they want with its share of the federal penalty including further lowering the penalty with state projects, then rules on minimum penalty amounts go out the window and our penalty and SEP Policies would be somewhat meaningless.

Ex. 5 AC/AWP/DP

If this still doesn't make sense, feel free to call me at 404-562-9538.

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>

Sent: Wednesday, August 7, 2019 5:48 PM

To: Bush, William <Bush.William@epa.gov>; King, Carol <King.Carol@epa.gov>

Subject: RE: penalty paid in the form of a project; looking for the old Walker Smith memo that dictated that non-conforming SEP projects be characterized as penalty and "State Project"

Hi Bill and Carol,

It's true that sometimes there are projects that a State under its independent authorities can accept as part of a settlement, which would not work, for one reason or another as a federal SEP. Or, it's a project that the State is interested in accepting, but we are not as keen. States often have more latitude under state law to do various types of projects and sometimes to accept funding to do work into certain state accounts of mechanisms. Once the State has determined that everything is allowable under state law and authority, we just want to make sure that the fact that it is a State SEP or project, under the state's authority, is made clear in the terms of the settlement documents. I wouldn't characterize these situation as penalty paid in form of a project, but rather as the state's part of the overall relief (e.g., State SEP to be delivered to State, penalty to be paid to state, etc.)

What's the context of this coming up?

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Bush, William <Bush.William@epa.gov>

Sent: Wednesday, August 07, 2019 5:11 PM

To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>

Subject: FW: penalty paid in the form of a project; looking for the old Walker Smith memo that dictated that non-conforming SEP projects be characterized as penalty and "State Project"

From: Bush, William

Sent: Wednesday, August 7, 2019 5:11 PM

To: King, Carol <King.Carol@epa.gov>

Subject: RE: penalty paid in the form of a project; looking for the old Walker Smith memo that dictated that non-conforming SEP projects be characterized as penalty and "State Project"

That's it!!

From: King, Carol <King.Carol@epa.gov>
Sent: Wednesday, August 7, 2019 5:06 PM
To: Bush, William <Bush.William@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: penalty paid in the form of a project; looking for the old Walker Smith memo that dictated that non-conforming SEP projects be characterized as penalty and "State Project"

Maybe it's covered by the Kaplan/Pollins 2005 memo?

From: King, Carol
Sent: Wednesday, August 07, 2019 5:03 PM
To: Bush, William <Bush.William@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: RE: penalty paid in the form of a project; looking for the old Walker Smith memo that dictated that non-conforming SEP projects be characterized as penalty and "State Project"

<https://www.epa.gov/enforcement/previous-supplemental-environmental-projects-guidance>

I'm looking through EPA's previous SEP guidance (link above), but haven't seen the Walker Smith memo you're asking for yet. Caroline will know more than me about the SEP issues and what our current positions may or may not be.

My recollection is that this issue came up just recently in an Industrial Branch case that was discussed at a WED General with John Fogarty and others. I'll ask Ben if he remembers.

From: Bush, William
Sent: Wednesday, August 07, 2019 4:36 PM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>; King, Carol <King.Carol@epa.gov>
Subject: penalty paid in the form of a project; looking for the old Walker Smith memo that dictated that non-conforming SEP projects be characterized as penalty and "State Project"

Paragraph 30 of the Chattanooga CWA CD: Chattanooga shall make payment as directed by the State of fifty percent (50%) of the civil penalty due as follows: Chattanooga shall spend \$238,200 on the State Project in accordance with, and as more particularly set forth in, Appendix D of this Consent Decree. TDEC has approved this payment as an appropriate State Project recognizing the value of the project and its potential to positively impact the local environment.

Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 8/9/2019 1:51:23 PM
To: Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]
Subject: Fwd: DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy
Attachments: DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy Inside.pdf; ATT00001.htm

As you might imagine, there's been a lot of chat about this (article for which we'd been asked for a statement). Typical inside EPA, a lot wrong, some right.

Sent from my iPhone

Begin forwarded message:

From: "Starfield, Lawrence" <Starfield.Lawrence@epa.gov>
Date: August 9, 2019 at 9:01:11 AM EDT
To: "Cozad, David" <Cozad.David@epa.gov>, "Koslow, Karin" <Koslow.Karin@epa.gov>, "Porter, Amy" <Porter.Amy@epa.gov>, "Kelley, Rosemarie" <Kelley.Rosemarie@epa.gov>, "Makepeace, Caroline" <Makepeace.Caroline@epa.gov>
Subject: Fwd: DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy

Full version.

Sent from my iPhone

Begin forwarded message:

From: "Egan, Patrick" <egan.patrick@epa.gov>
Date: August 9, 2019 at 8:58:21 AM EDT
To: "Starfield, Lawrence" <Starfield.Lawrence@epa.gov>, "Hull, George" <Hull.George@epa.gov>
Subject: RE: DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy

Here you go.

<https://insideepa.com/weekly-focus/doj-begins-rejecting-seps-municipal-settlements-undercutting-policy>

Patrick J. Egan, M.P.A.
Deputy Director of Communications
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW (MC: 2201A)
Washington, DC 20460
Office: 202-564-4059 | Cell: Ex. 6

From: Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Sent: Friday, August 9, 2019 8:54 AM
To: Hull, George <Hull.George@epa.gov>; Egan, Patrick <egan.patrick@epa.gov>
Subject: Fwd: DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy

Can you send me the full article?

Sent from my iPhone

Begin forwarded message:

From: "Traylor, Patrick" <traylor.patrick@epa.gov>
Date: August 8, 2019 at 7:02:22 PM EDT
To: "Bodine, Susan" <bodine.susan@epa.gov>, "Starfield, Lawrence" <Starfield.Lawrence@epa.gov>
Cc: "Hull, George" <Hull.George@epa.gov>
Subject: Fwd: DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)
Ex. 6 (cell)

Begin forwarded message:

From: "InsideEPA.com" <insideepa-alerts@iwpnews.com>
Date: August 8, 2019 at 6:18:10 PM EDT
To: traylor.patrick@epa.gov
Subject: DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy
Reply-To: insideepa-alerts@iwpnews.com



August 8, 2019

THE WEEKLY FOCUS

An in-depth look from our editors at a specific issue facing the Agency, published weekly.

DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting

AUSTIN, TX -- The Department of Justice (DOJ) is rejecting supplemental environmental (SEPs) in settlements it is negotiating with local governmental agencies, a move that undercuts department policy that says it will approve the projects as part of deals that comply with EPA's SEP policy, attorneys say.

READ MORE →

EDITORIAL CONTACT

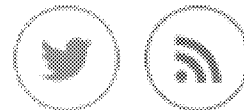
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Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 8/8/2019 6:33:44 PM
To: Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]
Subject: FW: InsideEPA Response - needs additional edits

I give....

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Makepeace, Caroline
Sent: Thursday, August 08, 2019 2:04 PM
To: Traylor, Patrick <traylor.patrick@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Hull, George <Hull.George@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Egan, Patrick <egan.patrick@epa.gov>
Cc: Porter, Amy <Porter.Amy@epa.gov>
Subject: RE: InsideEPA Response - needs additional edits

Under the circumstances, and apparent time frames, good point and fair enough!

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Traylor, Patrick <traylor.patrick@epa.gov>
Sent: Thursday, August 08, 2019 1:54 PM
To: Koslow, Karin <Koslow.Karin@epa.gov>; Hull, George <Hull.George@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Egan, Patrick <egan.patrick@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Cc: Porter, Amy <Porter.Amy@epa.gov>
Subject: RE: InsideEPA Response - needs additional edits

Ex. 5 Deliberative Process (DP)

EPA has not changed its 2015 policy regarding supplemental environmental projects (SEPs) in settlement agreements. A SEP is a beneficial environmental project or activity to which a party agrees that goes beyond what could legally be required in order for the party to return to compliance. On November 7, 2018, former Attorney General Jeff Sessions issued a Department of Justice (DOJ) policy entitled *Principles and Procedures for Civil Consent Decrees and Settlement Agreements with State and Local Governmental Entities* – see <https://www.justice.gov/opa/pr/justice-department-releases-memorandum-litigation-guidelines-civil-consent-decrees-and-settlement-agreements-with-state-and-local-governmental-entities>. As a policy matter, DOJ requires that judicial settlements with a state or local entity that include SEPs must first be reviewed and approved by the Associate Attorney General.

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
202.809.8796 (m)

Ex. 6

 (o)

From: Koslow, Karin <Koslow.Karin@epa.gov>
Sent: Thursday, August 8, 2019 1:39 PM
To: Hull, George <Hull.George@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Egan, Patrick <egan.patrick@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Cc: Porter, Amy <Porter.Amy@epa.gov>
Subject: RE: InsideEPA Response - needs additional edits

Ex. 5 AC/DP

Thanks,
Karin

Karin Koslow
Deputy Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Desk: (202) 564-0171
Cell:

Ex. 6

WJC South Room 3142D

From: Hull, George <Hull.George@epa.gov>
Sent: Thursday, August 08, 2019 1:25 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Egan, Patrick

<egan.patrick@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>

Cc: Koslow, Karin <Koslow.Karin@epa.gov>

Subject: RE: InsideEPA Response

Ex. 5 AC/DP

From: Hull, George

Sent: Thursday, August 08, 2019 12:53 PM

To: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Egan, Patrick <egan.patrick@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>

Cc: Koslow, Karin <Koslow.Karin@epa.gov>

Subject: RE: InsideEPA Response

Ex. 5 AC/DP

From: Bodine, Susan <bodine.susan@epa.gov>

Sent: Thursday, August 08, 2019 12:26 PM

To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Egan, Patrick <egan.patrick@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>

Cc: Hull, George <Hull.George@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>

Subject: RE: InsideEPA Response

OK

From: Starfield, Lawrence <Starfield.Lawrence@epa.gov>

Sent: Thursday, August 8, 2019 12:22 PM

To: Bodine, Susan <bodine.susan@epa.gov>; Egan, Patrick <egan.patrick@epa.gov>; Traylor, Patrick

<traylor.patrick@epa.gov>

Cc: Hull, George <Hull.George@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>

Subject: RE: InsideEPA Response

Susan,

Ex. 5 AC/DP

Cc'ing Karin to see if OCE has any concerns with the wording.

Larry

This message is CONFIDENTIAL, and may contain legally privileged information. If you are not the intended recipient, or believe you received this communication in error, please delete it immediately, do not copy, and notify the sender. Thank you.

From: Bodine, Susan <bodine.susan@epa.gov>

Sent: Thursday, August 08, 2019 11:56 AM

To: Egan, Patrick <egan.patrick@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>

Cc: Hull, George <Hull.George@epa.gov>

Subject: RE: InsideEPA Response

My redraft. Any comments? Also needs coordination with DOJ.

Ex. 5 AC/DP

From: Egan, Patrick <egan.patrick@epa.gov>

Sent: Thursday, August 8, 2019 11:01 AM

To: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>

Cc: Hull, George <Hull.George@epa.gov>

Subject: InsideEPA Response

Susan, Larry and Patrick,

Here is a proposed response to InsideEPA's inquiry. Let me know if you have any comments.

Thanks,

Pat

Ex. 5 AC/DP

Patrick J. Egan, M.P.A.

Deputy Director of Communications

Office of Enforcement and Compliance Assurance

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue NW (MC: 2201A)

Washington, DC 20460

Office: 202-564-4059 | Cell:

Ex. 6

Message

From: Makepeace, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=27D7588025B3410F9C9459E6CF9C44A4-CMAKEPEA]
Sent: 3/13/2017 5:54:44 PM
To: Zimny, James [zimny.james@epa.gov]
Subject: FW: Houston - revised SEP and Stipulated Remedy Language
Attachments: US revisions to CD sep lan 3-13-17.docx; revised Exh 2 3-13-17.docx; US revisions to stip para 120 3-13-17.docx

I'm thinking it might be helpful to have you on this call (to help me understand the subtext and history, at the very least!) – what do you think?

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Ordonez, Efren
Sent: Monday, March 13, 2017 1:50 PM
To: Goodwin, Phillip - LGL <Phillip.Goodwin@houston.tx.gov>; Debra Baker <dbaker@bakerwotring.com>; Bingham, Tiffany - LGL <Tiffany.Bingham@houston.tx.gov>
Cc: Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>; King, Carol <King.Carol@epa.gov>; Zimny, James <zimny.james@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Peters, Carol <Peters.Carol@epa.gov>
Subject: Houston - revised SEP and Stipulated Remedy Language

We have had a chance to review the language that you provided regarding the SEP and Stipulated Remedy. Attached please find our edits and comments. Are you available to have a small group discussion regarding this language tomorrow, Tuesday, any time between 1:30 pm -3:30 pm CST or this Wednesday from 10:00-11:00 am CST? The participants for the U.S. will be Caroline Makepeace, Carol Peters, and me. Once you let me know the time that you are available, I will send a scheduler.

Also, please let us know when you will provide the appendix that lists the census blocks for the stipulated remedy.
Efren

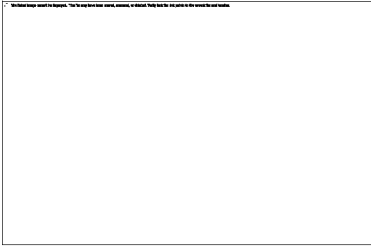
From: Goodwin, Phillip - LGL [<mailto:Phillip.Goodwin@houston.tx.gov>]
Sent: Monday, March 06, 2017 4:18 PM
To: Nat Douglas <nathaniel.douglas@usdoj.gov>; Ordonez, Efren <Ordonez.Efren@epa.gov>; King, Carol <King.Carol@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Cc: Goodwin, Phillip - LGL <Phillip.Goodwin@houston.tx.gov>; Debra Baker <dbaker@bakerwotring.com>; Bingham, Tiffany - LGL <Tiffany.Bingham@houston.tx.gov>
Subject: SEP Exhibit 2 CBG Selection and SEP Implementation 030617

All –

Please find attached SEP Exhibit 2. Caroline, please look at the tables and let me know if the CBG column needs to be broken down to list individual census blocks in any of the tables. We're currently working on a revision to Appendix S (list of Stipulated Remedy locations) to break the CBGs down into individual census blocks, which will not include the census blocks from the 3rd ranked CBG that were included in the SEP.

Please also find attached Houston's response to Efren's recent submittals of Paragraph 120 and Section VIII (SEP) of the CD. The comment on the Paragraph 120 document should explain our edit. Minor modifications were made to the SEP language from the CD to address certain impossibilities.

Thanks,



Phillip M. Goodwin, P.G.
Assistant City Attorney
City of Houston Legal Department
VOICE: 832-393-6285
FAX: 832-393-6259
phillip.goodwin@houstontx.gov

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Message

From: Porter, Amy [porter.amy@epa.gov]
Sent: 9/12/2019 9:21:59 PM
To: Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Porter, Amy [Porter.Amy@epa.gov]
Subject: Conversation with Rosemarie Kelley

Porter, Amy 5:15 PM:

Caroline is compressed tomorrow and waiting to hear from DOJ on Ex. 5 AC/DP ...wondering if I should ask her to take her computer home and check in. Pls advise.

Message

From: Buterbaugh, Kristin [Buterbaugh.Kristin@epa.gov]
Sent: 7/31/2019 4:30:50 PM
To: Porter, Amy [Porter.Amy@epa.gov]; Pollins, Mark [Pollins.Mark@epa.gov]
Subject: FW: my notes on 5 of the 6 muni SEPs; the 6th is Corpus Christi

Kristin Buterbaugh
Special Assistant
OECA - Office of Civil Enforcement
U.S. Environmental Protection Agency
WJC South 3119C
1200 Pennsylvania Avenue, NW
Washington, DC 20460
(202) 564-4479
Buterbaugh.Kristin@epa.gov

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From: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Sent: Friday, July 26, 2019 6:04 PM
To: Koslow, Karin <Koslow.Karin@epa.gov>
Cc: Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>
Subject: my notes on 5 of the 6 muni SEPs; the 6th is Corpus Christi

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Rosemarie Kelley, Director

Office of Civil Enforcement

OECA

Message

From: Jonesi, Gary [Jonesi.Gary@epa.gov]
Sent: 7/17/2019 5:14:44 PM
To: Porter, Amy [Porter.Amy@epa.gov]
Subject: XPS General Conferencing Number: 1 (202) 991-0477 Conference ID 2188530 - 6/26/2019

See mtg notes below

Link to meeting notes: [XPS General Conferencing Number](#) **Ex. 6 Personal Privacy (PP)** [Web view\)](#)

Ex. 6 Personal Privacy (PP)

Wednesday, June 26, 2019
9:38 AM

Meeting Date: 6/26/2019 10:00 AM (started at 10:20, ended at 11:10)

Location: 3146 WJCS

Link to Outlook Item: [click here](#)

Invitation Message

Participants

- ☒ [Kelley, Rosemarie](#) (Meeting Organizer)
- ☐ [Porter, Amy](#)
- ☐ [Milton, Philip](#)
- ☐ [Holmes, Carol](#)
- ☐ [OECA-OCE-XPS](#)
- ☒ [Makepeace, Caroline](#) (Accepted in Outlook)
- ☒ [Kabler, Lauren](#)
- ☒ [OKeefe, Susan](#)
- ☒ [Fogarty, Johnpc](#)
- ☒ [Jonesi, Gary](#)
- ☐ [Smith-Watts, David](#)
- ☐ [Denton, Loren](#)
- ☐ [Sullivan, Greg](#)
- ☐ [Buterbaugh, Kristin](#)
- ☐ [Greenwald, Kathryn](#)
- ☐ [Williamson, Caroline](#)
- ☐ [Harned, Greg](#)
- ☒ [Binder, Jonathan](#) (Accepted in Outlook)
- ☐ [Fellus, Molly](#)
- ☒ [Koslow, Karin](#) (Accepted in Outlook)
- ☒ [Levandowski, Ryan](#)

Notes

AGENDA

1. Violation Correction – Status Update (Response to Kathleen’s Email and Draft Email to David/Susan/Henry) – Kabler
 - Touch base with Bodine
2. PACE - Kabler
 - Try to have only a couple of dockets in July, not 6 (e.g., Regions 1, 2, 4 and then 5 later) to test the process
 - RK: OK
3. Inspector Credentials Memo - Kelley raised
 - KK: changes reqmts for inspectors
 - Fogarty: need federal credentials to be state inspector
 - KK: will forward email to Kabler and she'll investigate if we submitted comments
4. Tribal - O’Keefe & Binder
 - a. Expedited tools guidance
 - WG efforts being reactivated; draft to RK/KK by 7/31, hope to talk to Bodine in August

a.

Ex. 5 AC/DP

5. Audits – Jonesi

- a. FAQs review status
 - 7/1 comments likely from KK

a.

Ex. 5 AC/DP

6. EAB Permit Appeals Proposal (OECA IO reactions, next steps?) - Jonesi

- GJ sent EPA org. history analysis to RK, KK, JF

1. SEPs - Makepeace

Ex. 5 AC/AWP/DP

Created with Microsoft OneNote 2016.

Message

From: Kabler, Lauren [Kabler.Lauren@epa.gov]
Sent: 4/3/2019 5:02:32 PM
To: Porter, Amy [Porter.Amy@epa.gov]
Subject: RE: XPS General Agenda - comments by 5pm

I scheduled our meeting for next week so you really should take it off. We have a lot to discuss I think. Not sure if you were able to work through the email I sent you last night??

LAUREN V. KABLER
SPECIAL COUNSEL
OCE/IO/XPS
202-564-4052 (DESK)
202-368-5590 (CELL)

From: Porter, Amy
Sent: Wednesday, April 03, 2019 12:59 PM
To: Kabler, Lauren <Kabler.Lauren@epa.gov>
Subject: RE: XPS General Agenda - comments by 5pm

Yes, and I'm not sure if we will have time so I may need to take it off.

From: Kabler, Lauren
Sent: Wednesday, April 03, 2019 10:02 AM
To: Porter, Amy <Porter.Amy@epa.gov>
Subject: RE: XPS General Agenda - comments by 5pm

I'm not comfortable doing PACE until you and I are on the same page and we have a chance to walk through the proposal. Agree?

LAUREN V. KABLER
SPECIAL COUNSEL
OCE/IO/XPS
202-564-4052 (DESK)
202-368-5590 (CELL)

From: Porter, Amy
Sent: Wednesday, April 03, 2019 10:00 AM
To: OECA-OCE-XPS <OECA-OCE-XPS@epa.gov>; Milton, Philip <Milton.Philip@epa.gov>; Binder, Jonathan <Binder.Jonathan@epa.gov>; Greenwald, Kathryn <Greenwald.Kathryn@epa.gov>
Subject: XPS General Agenda - comments by 5pm

This is very draft – comments by 5pm please:

- 1) PACE proposal (Lauren)
- 2) DOJ SEP Concerns in Muni Cases (Caroline)
- 3) New O&G Program Applicability to Operators (Audit team, Susan, Caroline)
- 4) Tribal – do we need to catch her up on NTOC? Also, I'm hoping to have heard back from Region 8 on exactly what LEAN sessions RK needs to attend. Anything else?? (susan, JB)
- 5) Informal Actions Tracking - NOT likely to need this but penciling it in and we can decide after today's meeting.

Amy Porter, Director

Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-2431

Message

From: Koslow, Karin [Koslow.Karin@epa.gov]
Sent: 7/29/2019 5:05:41 PM
To: Buterbaugh, Kristin [Buterbaugh.Kristin@epa.gov]; Porter, Amy [Porter.Amy@epa.gov]
Subject: Close hold - do not distribute - Draft SEPs State/Local Memo
Attachments: ENRD State and Local SEP Memo External Draft 1.docx

This is JClark's draft SEP memo. Larry originally sent it to Rosemarie, Caroline, John and me. Larry was okay with us sharing this with a few others, as needed, so I wanted you both to have this.

At this point, I do not plan to share it with anyone else. After we have more clarity on next steps, we may decide to share with Div Directors.

Thanks,
Karin

Karin Koslow
Deputy Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Desk: (202) 564-0171
Cell: (202) 716-5645
WJC South Room 3142D

Message

From: Kabler, Lauren [Kabler.Lauren@epa.gov]
Sent: 4/3/2019 10:44:23 PM
To: Porter, Amy [Porter.Amy@epa.gov]
Subject: Re: revised XPS General Agenda

We can do it if you think we are simpatico. Did you send a revised? I thought you said you were making some changes but maybe I misunderstood?

On Apr 3, 2019, at 6:23 PM, Porter, Amy <Porter.Amy@epa.gov> wrote:

Revised draft agenda:

- 1) PACE (if Lauren is in agreement that we are ready)
- 2) Tribal
 - a. White House Inquiry
 - b. NTOC Meeting
 - c. OITA Program Evaluation

I don't think we need to put the O&G operator issue on.

Comments?

From: Porter, Amy
Sent: Wednesday, April 03, 2019 10:00 AM
To: OECA-OCE-XPS <OECA-OCE-XPS@epa.gov>; Milton, Philip <Milton.Philip@epa.gov>; Binder, Jonathan <Binder.Jonathan@epa.gov>; Greenwald, Kathryn <Greenwald.Kathryn@epa.gov>
Subject: XPS General Agenda - comments by 5pm

This is very draft – comments by 5pm please:

- 1) PACE proposal (Lauren)
- 2) DOJ SEP Concerns in Muni Cases (Caroline)
- 3) New O&G Program Applicability to Operators (Audit team, Susan, Caroline)
- 4) Tribal – do we need to catch her up on NTOC? Also, I'm hoping to have heard back from Region 8 on exactly what LEAN sessions RK needs to attend. Anything else?? (susan, JB)
- 5) Informal Actions Tracking - NOT likely to need this but penciling it in and we can decide after today's meeting.

Amy Porter, Director
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-2431

Message

From: Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Sent: 4/29/2019 6:09:59 PM
To: Porter, Amy [Porter.Amy@epa.gov]
Subject: FW: SEP talking points
Attachments: Possible Talking Points for meeting with Jesse Pannuccio 4 29 19 revised.docx

Caroline Makepeace
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

From: Starfield, Lawrence
Sent: Monday, April 29, 2019 2:03 PM
To: Bodine, Susan <bodine.susan@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>
Subject: SEP talking points

Susan,

OCE had a number of good revisions to the draft talking points on SEPs. The revised memo is attached.

Larry

Message

From: OKeefe, Susan [OKeefe.Susan@epa.gov]
Sent: 4/15/2019 2:24:28 PM
To: Porter, Amy [Porter.Amy@epa.gov]
Subject: RE: SEP Briefing Prep

Thanks for copying me on the plan for this!

From: Porter, Amy
Sent: Monday, April 15, 2019 10:02 AM
To: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>; OKeefe, Susan <OKeefe.Susan@epa.gov>; Chapman, Apple <Chapman.Apple@epa.gov>
Subject: SEP Briefing Prep

Caroline –

Ex. 5 AC/DP

Please let us know if any questions.

Amy

Cc:ing Susan O'Keefe who will be acting for me, Mark who will be acting for Rosemarie T-Th and Apple who will be acting for Rosemarie on Friday. As far as I know only Caroline (and John if he can make it) are actually attending the DOJ briefing but if anyone has any different info please let me know.

Message

From: Porter, Amy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8A3C7DFBB2E445A7A6D37AABBE73D06B-APORTE02]
Sent: 8/9/2019 1:03:15 PM
To: Johnpc Fogarty [Fogarty.Johnpc@epa.gov]
Subject: FW: DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy
Attachments: DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy Inside.pdf; ATT00001.htm

FYI

From: Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Sent: Friday, August 09, 2019 9:01 AM
To: Cozad, David <Cozad.David@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: Fwd: DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy

Full version.

Sent from my iPhone

Begin forwarded message:

From: "Egan, Patrick" <egan.patrick@epa.gov>
Date: August 9, 2019 at 8:58:21 AM EDT
To: "Starfield, Lawrence" <Starfield.Lawrence@epa.gov>, "Hull, George" <Hull.George@epa.gov>
Subject: RE: DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy

Here you go.

<https://insideepa.com/weekly-focus/doj-begins-rejecting-seps-municipal-settlements-undercutting-policy>

Patrick J. Egan, M.P.A.
Deputy Director of Communications
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW (MC: 2201A)
Washington, DC 20460
Office: 202-564-4059 | Cell: Ex. 6

From: Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Sent: Friday, August 9, 2019 8:54 AM
To: Hull, George <Hull.George@epa.gov>; Egan, Patrick <egan.patrick@epa.gov>
Subject: Fwd: DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy

Can you send me the full article?

Sent from my iPhone

Begin forwarded message:

From: "Traylor, Patrick" <traylor.patrick@epa.gov>
Date: August 8, 2019 at 7:02:22 PM EDT
To: "Bodine, Susan" <bodine.susan@epa.gov>, "Starfield, Lawrence" <Starfield.Lawrence@epa.gov>
Cc: "Hull, George" <Hull.George@epa.gov>
Subject: Fwd: DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)
Ex. 6 (cell)

Begin forwarded message:

From: "InsideEPA.com" <insideepa-alerts@iwpnews.com>
Date: August 8, 2019 at 6:18:10 PM EDT
To: traylor.patrick@epa.gov
Subject: DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy
Reply-To: insideepa-alerts@iwpnews.com



August 8, 2019

THE WEEKLY FOCUS

An in-depth look from our editors at a specific issue facing the Agency, published week

DOJ Begins Rejecting SEPs In Municipal Settlements, Undercutting Policy

AUSTIN, TX -- The Department of Justice (DOJ) is rejecting supplemental environmental (SEPs) in settlements it is negotiating with local governmental agencies, a move that appears to undercut department policy that says it will approve the projects as part of deals provided they comply with EPA's SEP policy, attorneys say.

READ MORE →

EDITORIAL CONTACT

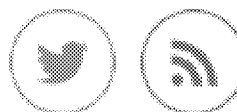
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Message

From: Porter, Amy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8A3C7DFBB2E445A7A6D37AABBE73D06B-APORTE02]
Sent: 7/19/2019 8:52:10 PM
To: Carol Holmes (Holmes.Carol@epa.gov) [Holmes.Carol@epa.gov]; Jonesi, Gary [Jonesi.Gary@epa.gov]; Smith-Watts, David [Smith-Watts.David@epa.gov]
Subject: DOJ SEP Memo

I did ask Rosemarie about sharing the DOJ SEP memo and she said that they had not inquired about sharing so at this point it is a close hold.

Sorry.

Amy Porter, Director
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-2431

Appointment

From: Porter, Amy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8A3C7DFBB2E445A7A6D37AABBE73D06B-APORTE02]
Sent: 7/17/2019 6:46:57 PM
To: Koslow, Karin [Koslow.Karin@epa.gov]
Subject: Accepted: Quick strategy discussion re: recommendation for next steps vis a vis DOJ Draft SEP memo
Location: Rosemarie's office
Start: 7/17/2019 8:00:00 PM
End: 7/17/2019 8:30:00 PM
Show Time As: Busy

Message

From: Porter, Amy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8A3C7DFBB2E445A7A6D37AABBE73D06B-APORTE02]
Sent: 9/20/2019 12:33:41 PM
To: Binder, Jonathan [Binder.Jonathan@epa.gov]
Subject: Re: The Morning Headlines from InsideEPA.com -- September 20, 2019 - SEP Article

Thanks!!

Sent from my iPhone

On Sep 20, 2019, at 8:01 AM, Binder, Jonathan <Binder.Jonathan@epa.gov> wrote:

FYI - A top Justice Department (DOJ) official is considering additional "broader" limits on the use of popular supplemental environmental projects (SEPs) as a way to mitigate penalties in enforcement settlements after DOJ last month curbed their use in municipal settlements, forcing renegotiation of some pending deals and likely curbing future settlements that would implement EPA's upcoming lead and copper drinking water rule.

Jeffrey Clark, DOJ's assistant attorney general for the Environment & Natural Resources Division (ENRD), told *Inside EPA* on the sidelines of the American Bar Association environment fall conference in Boston Sept. 12, that the department continues to examine additional options for curbing defendants' use of such projects in settlements, as he had indicated in his [August memo](#) that dramatically limited SEPs for municipalities.

<https://insideepa.com/weekly-focus/doj-weighs-%e2%80%98broader%e2%80%99-sep-limits-new-policy-forces-renegotiations>

From: InsideEPA.com <insideepa-alerts@iwpnews.com>
Sent: Friday, September 20, 2019 7:15 AM
To: Binder, Jonathan <Binder.Jonathan@epa.gov>
Subject: The Morning Headlines from InsideEPA.com -- September 20, 2019



September 20, 2019

The Weekly Focus

DOJ Weighs 'Broader' SEP Limits As New Policy Forces Renegotiations

A top Justice Department (DOJ) official is considering additional “broader” limits on the use of popular supplemental environmental projects (SEPs) as a way to mitigate penalties in enforcement settlements after DOJ last month curbed their use in municipal settlements, forcing renegotiation of some pending deals and likely curbing future settlements that would implement EPA’s upcoming lead and copper drinking water rule.

Latest News

Agencies Defend Legal Basis For Scrapping California Auto GHG Waiver

EPA and the Transportation Department (DOT) are defending the legal basis for their just-issued rule revoking California’s power to set its own vehicle greenhouse gas limits, asserting the state is preempted by fuel economy law and lacks “compelling and extraordinary” conditions needed to receive such authority under the Clean Air Act.

Science Rule Schedule Slips As EPA Readies Supplemental, Wheeler Says

EPA Administrator Andrew Wheeler told the House science committee Sept. 19 that the agency’s schedule for issuing its controversial rule barring regulators from relying on scientific research that is not published has slipped as the agency is preparing to issue a supplemental proposal in early 2020.

Governors Press Congress To Back PFAS Measures In Defense Bill

A bipartisan group of 15 governors is pressing leaders of the House and Senate Armed Services committees to back measures in pending defense authorization legislation that would require EPA and the Defense Department (DOD) to set policies to regulate the chemicals, curb releases and clean up contamination from per- and polyfluoroalkyl substances (PFAS).

CARB Pledges To Enforce Current Auto GHG Rules Despite EPA Preemption

California Air Resources Board (CARB) officials say they will continue to enforce the state’s strict vehicle greenhouse gas standards during litigation over the Trump administration’s just-issued revocation of the state’s Clean Air Act preemption waiver allowing it to set its own requirements.

EPA, NHTSA Release Final Rule Revoking California Auto GHG Authority

EPA and the National Highway Traffic Safety Administration (NHTSA) have released the text of their final regulation revoking California’s authority to enforce auto greenhouse gas and zero-emission vehicle (ZEV) standards, with administration officials arguing the step is necessary to preserve a single set of national requirements.

Daily Feed

Trump says EPA to cite San Francisco over homeless pollution

The president’s remarks come as the White House is engaged in a heated confrontation with California over vehicle greenhouse gas standards.

EPA Gold King mine spill suits might see three-part trial starting in 2021

Litigation over the 2015 Gold King spill is not expected to go to trial until the summer of 2021 under a new plan that would split its ‘complex’ proceedings into three parts.

OMB completes review of proposed DOE mercury storage fees rule

The Energy Department’s proposed elemental mercury storage fees rule is part of a program to designate a facility for long-term storage of the substance under a 2008 law banning the export of mercury.

EPA, DOJ announce \$47 million pact with Hyundai over illegal engines

The government says that the vehicle manufacturer illegally “stockpiled” thousands of engines with outdated emission controls and later sold them in heavy construction equipment.

Ewire: EPA, DOT detail rule to scrap California auto GHG power

In today’s Ewire: The agencies’ rule will “help ensure there will be one, and only one, set of national fuel economy and greenhouse gas emission standards for vehicles,” they argue.

Environmentalists sue EPA over New Mexico stormwater

“We are disappointed that for years EPA has failed to take action to protect New Mexicans’ public health and environment and require that these toxic discharges be controlled and monitored.”

Environment Next

Interview

EDF Said Environmental ‘Crisis’ Requires Policies, Voluntary Programs

As the head of Environmental Defense Fund’s (EDF) business partnerships program, Tom Murray has seen industry’s trend toward sustainability grow significantly, including companies pursuing voluntary emissions cuts, use of safer chemicals, and a growing focus on addressing climate change.

States See Climate Programs Building ‘Infrastructure’ For Future Federal Plan

BOSTON -- State officials pushing aggressive green energy mandates and opposing EPA’s rule rollbacks see their programs as “infrastructure” for complying with future federal rules, echoing a belief from some Democrats and environmentalists that states will be unable to meet their climate goals without Democrats retaking the White House.

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Message

From: Porter, Amy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8A3C7DFBB2E445A7A6D37AABBE73D06B-APORTE02]
Sent: 5/15/2019 12:20:27 PM
To: Jonesi, Gary [Jonesi.Gary@epa.gov]
Subject: FW: CREO - Summary of 5/13/19 Call
Attachments: 2019-05-13 Meeting Summary.docx

Interesting discussion on SEPs. **Ex. 5 AC/DP**
Ex. 5 AC/DP DOJ will be discussing on Thursday's 1:00 call. Can you attend?

From: Jonesi, Gary
Sent: Tuesday, May 14, 2019 5:33 PM
To: Argentieri, Sabrina <argentieri.sabrina@epa.gov>; Banwell, Peter <Banwell.Peter@epa.gov>; Beeler, Cindy <Beeler.Cindy@epa.gov>; Bieri, Britt <bieri.britt@epa.gov>; Burke, Susan <Burke.Susan@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Chabria, Monesh <chabria.monesh@epa.gov>; Chatfield, Ethan <chatfield.ethan@epa.gov>; Clouse, Matt <Clouse.Matt@epa.gov>; Connor, Garth <CONNOR.GARTH@EPA.GOV>; Critchfield, James <Critchfield.James@epa.gov>; Deborah Gitin (deborah.gitin@usdoj.gov) <deborah.gitin@usdoj.gov>; Denny, Andrea <Denny.Andrea@epa.gov>; DeYoung, Robyn <DeYoung.Robyn@epa.gov>; Dressler, Jason <Dressler.Jason@epa.gov>; Fischer, Lauren <Fischer.Lauren@epa.gov>; Flynn, Bridget <flynn.bridget@epa.gov>; Freed, Elisabeth <Freed.Elisabeth@epa.gov>; Froikin, Sara <Froikin.Sara@epa.gov>; Gallagher, Shirin <Gallagher.Shirin@epa.gov>; Garvey, Melanie <Garvey.Melanie@epa.gov>; Gregory, John <Gregory.John@epa.gov>; Hammond, Lauren <Hammond.Lauren@epa.gov>; Hoffman, Howard <hoffman.howard@epa.gov>; Jonesi, Gary <Jonesi.Gary@epa.gov>; Jouzaitis, Joan <jouzaitis.joan@epa.gov>; Klinger, Adam <Klinger.Adam@epa.gov>; Kodish, Jeff <Kodish.Jeff@epa.gov>; leslie.allen@usdoj.gov; Livingston, Peggy <Livingston.Peggy@epa.gov>; Lloyd, David <Lloyd.David@epa.gov>; Loutan, Reema <Loutan.Reema@epa.gov>; Ludwig, Victoria <Ludwig.Victoria@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Meisenbach, Caitlin <Meisenbach.Caitlin@epa.gov>; Mills, Clarissa <mills.clarissa@epa.gov>; Moskal, John <Moskal.John@epa.gov>; Mostaghim, Negin <Mostaghim.Negin@epa.gov>; Newman, Erin <newman.erin@epa.gov>; Ogle, Kimberly <Ogle.Kimberly@epa.gov>; OKeefe, Susan <OKeefe.Susan@epa.gov>; Olson, Erik <olson.erik@epa.gov>; Page, Phil <Page.Phil@epa.gov>; Pappas, Alexander <pappas.alexander@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Portmess, Jessica <Portmess.Jessica@epa.gov>; Quinones, Edwin <quinones.edwin@epa.gov>; Rehder, Timothy <Rehder.Timothy@epa.gov>; Riedel, Brian <riedel.brian@epa.gov>; Rog, Morgan <Rog.Morgan@epa.gov>; Root, Kathleen <Root.Kathleen@epa.gov>; Seltzer, Mark <Seltzer.Mark@epa.gov>; Shatas, Angie <Shatas.Angie@epa.gov>; Sobel, Aaron <Sobel.Aaron@epa.gov>; Steele, Mariah <Steele.Mariah@epa.gov>; Thomas, Marc <Thomas.Marc@epa.gov>; Thrush, Dale <Thrush.Dale@epa.gov>; Wood, Nicole <wood.nicole@epa.gov>; Zevenbergen, Michael (ENRD) <Michael.Zevenbergen@usdoj.gov>
Subject: CREO - Summary of 5/13/19 Call

To: CREO Liaisons

Hi everyone. Thanks to those of you who participated in yesterday's monthly call. The 5/13/19 meeting summary is accessible several ways:

- via the [CREO SharePoint site](#);
- via the site's [Meeting Materials page](#);
- attached in Word format; and
- copied below for your convenience.

Thanks.

--Gary



Be kind to the environment.
Please do not print this email unless necessary.

Gary A. Jones
National Coordinator
Clean Renewable Energy Opportunities (CREO)
Office of Civil Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W. (Rm. 4102-C)
Washington, D.C. 20004

202-564-4002 (direct)
703-304-6392 (cell)
jonesi.gary@epa.gov

“Clean Renewable Energy Opportunities (CREO) in Civil Enforcement”
Meeting Summary – May 13, 2019

Participants:

Organization	Liaison(s)	Other Contact(s)
Region 1	Joan Jozaitis	John Moskal
Region 2	Sara Frokin	
Region 3		
Region 4		
Region 5	Nicole Wood-Chi	Erin Newman
Region 6	Ed Quiñones	
Region 7	Clarissa Mills	
Region 8		
Region 9		Brian Riedel
Region 10	Shirin Gallagher	
Office of Civil Enforcement (OCE) - Immediate Office	Gary Jones	
OCE - Air Enforcement Division (AED)	Jeff Kodish	
Fuels, Vehicles, Engines Enforcement		
OCE - AED-Stationary Source Enforcement		
OCE - Water Enforcement Division (WED)		
OCE - Waste & Chemical Enforcement Division (WCED)	Negin Mostaghim	
OECA - Federal Facilities Enforcement Office (FFEO)	Melanie Garvey	
OECA - Office of Criminal Enforcement, Forensics, and Training (OCEFT)	John Gregory	
OECA - Office of Site Remediation Enforcement (OSRE)	Phil Page	
OLEM - Office of Pollution Prevention and Toxics		

OAR - Green Power Partnership	James Critchfield	
OAR - State & Local Energy & Environment Program		
OAR - Voluntary/Regulatory EERE programs		
OAR - Energy Star		
OAR - Office of Transportation & Air Quality (OTAQ)		Susan Burke
OGC - Air & Radiation Law Office (ARLO)	Howard Hoffman	
DOJ - ENRD - Environmental Enforcement Section (EES)		

Ex. 5 AC/DP

2. **Significant Developments:** Gary Jones summarized the following items:

a) **Industry Developments:**

- i) **Solar Power for Schools:** A [5/5/19 CleanTechnica article](#) reports on newly published research by Stanford's School of Earth, Energy & Environmental Sciences and published in the peer-reviewed journal *Environmental Research Letters*, touting the benefits of solar power for schools. The benefits include: (1) providing an alternative to cutting down trees to install PV panels; (2) offsetting school system energy expenditures; (3) reducing the school system's carbon footprint; and (4) teaching future generations about the value of clean renewable electricity.
- ii) **Repurposing Closed Coal Plants:** As noted in a [4/13/19 St. Louis Dispatch article](#), the owner of Southern Illinois coal power plants facing likely closure for economic reasons is supporting state legislation to help repurpose sites for utility-scale solar and energy storage projects. According to the operator, Vistra Energy (who bought Dynegy in 2018), the [Illinois Coal to Solar and Energy Storage Act](#) would provide a combination of [renewable energy credits \(RECs\)](#) and state-awarded grants as a way to more "responsibly transition" for plant employees, local communities, and the state's ambitious clean energy goals. [Vistra says](#) the concept would beneficially "reuse the substantial transmission infrastructure and available land at existing coal-fueled power plants" and estimates that "up to 2,000 construction jobs and support jobs" would directly be created through the process of repurposing its facilities. Some critics, including environmental groups, are pleased that coal companies are considering such repurposing but view the proposed legislation as a multimillion-dollar coal bailout that the public should not be asked to pay for given that market forces have caused such plants to become unprofitable.

b) State & Local Developments:

- i) **New York:** As noted in a [5/10/19 Climatewire article](#), New York State on 5/9/19 adopted [revised CO₂ emission standards on non-modified existing major electric generating facilities](#) which the State's two remaining coal-fired power plants reportedly cannot meet, effectively barring coal from the State's grid.
- ii) **Washington:** As noted in a [5/7/19 web posting](#), on 5/7/19 Governor Jay Inslee signed into law several clean energy bills that set "aggressive timelines for decarbonizing Washington's economy and transforming the state's energy landscape." Among other things, the legislation eliminates coal power, including "coal-by-wire" from out of state, by 2025, and it requires Washington utilities to transition to a carbon-neutral electricity supply by 2030 and puts the state on a path to entirely eliminate fossil fuels from electricity generation by 2045. It also provides grants and tax incentives for electric vehicles, converts its ferry fleet to electric and hybrid-electric ships, and improves building energy performance standards.
- iii) **Tennessee:** As noted in a [4/29/19 Renewable Energy World article](#), Tennessee's largest solar facility is now online. The 53-megawatt (MW) array in Millington is a partnership with independent power producer Silicon Ranch Corporation, the U.S. Navy, the Tennessee Valley Authority (TVA), and Memphis, Light, Gas and Water. Power from the project will go to Naval Support Academy Mid-South and TVA, providing the naval installation with a new alternative electrical feed that will

increase its energy security and resilience. Tennessee Governor Bill Lee praised the project, stating that, “Partnerships fuel innovation, and we are proud of the work by community leaders, the U.S. Navy, and Silicon Ranch to expand solar technology in West Tennessee. We look forward to a continued partnership as we strengthen rural Tennessee, modernize our infrastructure, and prepare for the jobs of the future.”

- iv) **California:** As noted in a [4/17/19 Energywire article](#), some homeowners fearful of more extreme weather and wildfire-induced power blackouts are adding solar PV panels and battery storage to their homes, and solar power companies are highlighting such resilience concerns in their sales messaging efforts in California, Puerto Rico, and other areas. As noted in a [4/19/19 Bloomberg Environment article](#), solar panels are considered hazardous waste in California and the State is trying to streamline the process of making disposal easier (while adding protective safeguards) to deal with panels that become broken or reach the end of their useful life. To do so, [California proposed regulations on 4/19/19](#) to treat PV modules as “universal wastes.”

Gary noted that EPA would be best served to incorporate end-of-useful-life disposition provisions in any solar, wind, or other settlements involving clean renewable energy equipment that must be properly recycled or disposed.

Jeff Kodish (OCE-AED) mentioned that Colorado Governor Jared Polis is expected very shortly to sign into law a bill passed by the Colorado legislature that would require greenhouse gas emissions to be reduced 26% by 2025, 50% by 2030, and 90% by 2050. Gary committed to updating the CREO Liaisons if/when the bill is enacted.

- c) **International Developments:** As noted in a [4/25/19 CNN article](#), a \$13.6 billion solar park is well under construction in oil-rich Dubai. In its eighth year of development, it already has 2.3 million photovoltaic (PV) panels with a capacity of 213 megawatts (MW), and the next phase will add over three million PV panels and 800 MW and should be completed in 2020. The 5,000 MW solar park is also expected to include the tallest concentrated solar power (CSP) tower in the world (at 853 feet). As with other CSP units, it will use mirrors (heliostats) to focus sunlight at the top of the tower, in order to heat up a flow of molten salts, which is used to power steam turbines and generate electricity, thereby allowing the 15 hours of stored heat to provide power 24 hours a day. When finished in about 2030, the project is expected to power as many as 1.3 million homes, reducing carbon emissions by 6.5 million tons annually.

d) **Executive Branch Actions:**

Statements from Senior Administration Officials:

[DOE Secretary Rick Perry](#) made the following statements in support of clean renewable energy:

- (1) [5/9/19: A tweet touting how “Innovation is Powering the New American Energy Era”](#) and prominently showing solar and wind facilities in a video.

- (2) 5/9/19: Numerous statements in support of clean renewables such as wind and solar during Testimony before the House Energy and Commerce Committee on DOE's 2020 budget request (e.g., at 43:49 and 1:30:30)
- (3) 4/25/19: In his remarks at the EarthX environmental conference in Dallas, Texas, he bragged (video at 3:20) about Texas leading the nation in wind power and said "what's true for Texas is true for this nation." He also said (video at 5:43) that "Now the first step [to make our energy even cleaner through innovation] is to take energy that is free of emissions and generate more of it. That includes renewables like solar and wind which are now more affordable and available than ever." As noted in a 5/2/19 CleanTechnica article, Perry also expressed support for coal, nuclear, and natural gas as vehicles for ensuring reliable energy as compared to intermittent sources like wind and solar but added support (video at 9:20) for research into energy storage to help such clean renewables become, in his view, as reliable as coal, nuclear, and natural gas.

FERC Chairman Neil Chatterjee made the following statements in support of clean renewable energy:

- 4/10/19: As noted in a 4/10/19 CNN article, in his remarks at the 2019 Columbia Global Energy Summit in New York, he stated (video at) that, "I believe climate change is real. I believe man has an impact . . . and I believe that we need to take steps to mitigate emissions urgently."

Ex. 5 AC/DP

5. Adjournment: Gary reminded everyone that the next CREO call is scheduled for June 10th at 3pm EDT.

Message

From: Porter, Amy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8A3C7DFBB2E445A7A6D37AABBE73D06B-APORTE02]
Sent: 4/15/2019 6:29:58 PM
To: Kabler, Lauren [Kabler.Lauren@epa.gov]
Subject: RE: Very Quick Turn-Around - Request from AA re: SEPs/Annual Results - Going Back Five years

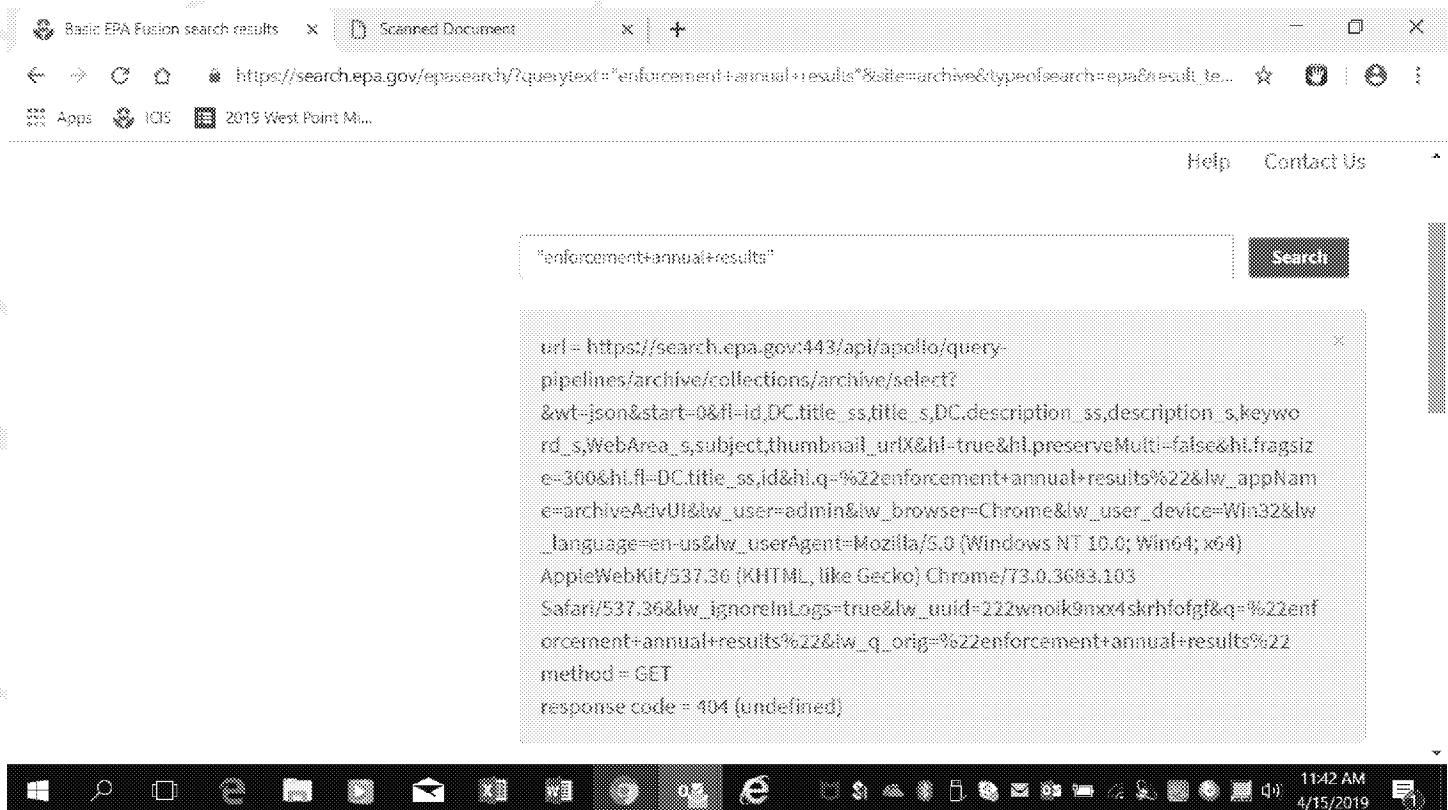
Thank you so much, Lauren!

From: Kabler, Lauren
Sent: Monday, April 15, 2019 11:46 AM
To: Ager, Sara <Ager.Sara@epa.gov>; Holic, Daniel <Holic.Daniel@epa.gov>
Cc: Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; OKeefe, Susan <OKeefe.Susan@epa.gov>
Subject: Very Quick Turn-Around - Request from AA re: SEPs/Annual Results - Going Back Five years

Sara and Dan – Caroline is preparing SEP briefing papers for Susan Bodine for a meeting later this week with DOJ management.

Ex. 5 AC/DP

Ex. 5 AC/DP



LAUREN V. KABLER
SPECIAL COUNSEL
OCE/IO/XPS
202-564-4052 (DESK)
202-368-5590 (CELL)

Message

From: Porter, Amy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8A3C7DFBB2E445A7A6D37AABBE73D06B-APORTE02]
Sent: 5/7/2019 3:04:23 PM
To: Amy.Porter.[Porter.Amy@epa.gov]
Subject: **Ex. 5 AC/DP**

Ex. 5 AC/DP

Amy Porter, Director
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-2431

Message

From: Porter, Amy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8A3C7DFBB2E445A7A6D37AABBE73D06B-APORTE02]
Sent: 8/30/2019 6:34:38 PM
To: Amy Porter [Porter.Amy@epa.gov]
Subject: FW: SEP follow up

Karen – our comments seem fine

Ex. 5 AC/AWP/DP

From: Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Sent: Thursday, August 29, 2019 4:48 PM
To: karen.dworkin@usdoj.gov; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>
Subject: RE: SEP follow up

Hi Karen,
These look pretty good, but we discussed with Susan and Larry and have some thoughts for tweaks.

Ex. 5 AC/AWP/DP

Re your other questions: Susan's talk with the Regions went well, in that, while people didn't like hearing about Jeff's view and the impact on judicial cases, they got the message.

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Caroline Makepeace
Senior Counsel
Office of Civil Enforcement
US Environmental Protection Agency
202-564-6012

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From: Dworkin, Karen (ENRD) <Karen.Dworkin@usdoj.gov>
Sent: Thursday, August 29, 2019 2:37 PM
To: Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Subject: SEP follow up

Hi. I see Rosemarie is out today. Forwarding this for any info you have on the call yesterday, and any initial reactions to the below. **Ex. 5 Attorney Client (AC)** Karen.

From: Dworkin, Karen (ENRD)
Sent: Thursday, August 29, 2019 12:56 PM
To: 'Kelley, Rosemarie' <Kelley.Rosemarie@epa.gov>
Subject: time for a SEP follow up call today?

Would like to hear how Susan's call with Regions went, and what if anything Susan plans to raise with Jeff re SEPs in the call/meeting tomorrow. **Ex. 5 Attorney Client (AC)**

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP